

SUPREME COURT OF THE UNITED STATES  
NO. 141, ORIGINAL

STATE OF TEXAS,                    )  
  )  
          Plaintiff,                )  
  )  
VS.                                 ) VOLUME XIII  
  )  
STATE OF NEW MEXICO                )  
AND STATE OF COLORADO,            )  
  )  
          Defendants.                )

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for HEARING  
before HONORABLE MICHAEL A. MELLOY, SPECIAL MASTER,  
held REMOTELY via Zoom, on NOVEMBER 2, 2021,  
commencing at 11:00 a.m.;

Proceedings reported by Certified Shorthand  
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Transcription.

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## INDEX

|  | Page |
|--|------|
| DAVID SALOPEK                              |      |
| Further Direct Examination by Mr. Wechsler | 7    |
| Cross-Examination by Mr. Leininger         | 61   |
| Cross-Examination by Ms. Klahn             | 83   |
| Redirect Examination by Mr. Wechsler       | 93   |
| GREGORY CARRASCO                           |      |
| Direct Examination by Ms. Dalrymple        | 105  |
| Cross-Examination by Mr. Deitchman         | 139  |
| Cross-Examination by Mr. Dubois            | 144  |
| SHANE FRANZOY                              |      |
| Direct Examination by Mr. Ogaz             | 151  |
| Cross-Examination by Mr. Dubois            | 190  |
| Cross-Examination by Mr. Deitchman         | 219  |
| Redirect Examination by Mr. Ogaz           | 220  |
| JORGE GARCIA                               |      |
| Direct Examination by Mr. Draper           | 225  |
| REPORTER'S CERTIFICATION                   | 237  |

1                   **JUDGE MELLOY:** All right. Should we get  
2 started this morning? This is in Original No. 141,  
3 Texas versus New Mexico and Colorado with United  
4 States as intervenor. I'd ask the parties who are  
5 going to be appearing at today's session to enter  
6 their appearance. All of a sudden my screen went  
7 blank. Okay. I got it back now. All right.  
8 Ms. Klahn?

9                   **MS. KLAHN:** Good morning, Your Honor.  
10 Sarah Klahn.

11                  **JUDGE MELLOY:** Mr. Wechsler?

12                  **MR. WECHSLER:** Good morning, Your Honor.  
13 Jeff Wechsler for the State of New Mexico.

14                  **JUDGE MELLOY:** Mr. Wallace?

15                  **MR. WALLACE:** Good morning, Your Honor.  
16 Chad Wallace for the State of Colorado.

17                  **JUDGE MELLOY:** Mr. Leininger.

18                  **MR. LEININGER:** Good morning, Your  
19 Honor. Lee Leininger for the United States.

20                  **JUDGE MELLOY:** Before we resume the  
21 examination of the witness, let me just mention one  
22 administrative issue. I was contacted by Judge  
23 Boylan, the proposed mediator in this case, and who  
24 indicated he had been in consultation with the parties  
25 and have set up -- and set up some mediation sessions

1 for December, but essentially the reason he contacted  
2 me was to ask that I enter an order formally  
3 appointing him mediator. I expect to do that today or  
4 at the latest tomorrow. It'll be essentially the same  
5 order that I used for Judge Wanger with the exception  
6 that Judge Boylan indicated that the parties wanted  
7 his hourly rate specified in the order, so I will add  
8 that to the order. I also anticipate sending an  
9 e-mail and contacting Judge Wanger just to express  
10 appreciation for his services and acknowledge the fact  
11 that he'll no longer be serving as mediator in the  
12 case. I don't know if Judge Boylan wants to be added  
13 to the service list. If he does, we'll certainly add  
14 him, and I'll take Judge Wanger off the list. Any  
15 questions or did I misunderstand anything from Judge  
16 Boylan as to your discussions with him? If not, then  
17 we will resume the testimony of the witness.

18 Mr. --

19 **MS. KLAHN:** Your Honor, could I raise  
20 one administrative issue myself?

21 **JUDGE MELLOY:** Sure.

22 **MS. KLAHN:** We are going to be  
23 supplementing the cross-examination exhibits for Danny  
24 Chavez with the Texas drone video, which the United  
25 States provided to you back at the beginning of the

1 trial on a thumb drive, I think. It's Texas Exhibit  
2 1200. The question came up this morning. We can  
3 certainly send another thumb drive. We're happy to do  
4 that. But we didn't know if you wanted to have two of  
5 those rattling around or if you're fine just using the  
6 one that you have for the United States.

7 JUDGE MELLOY: I think one should be  
8 sufficient.

9 MS. KLAHN: All right. Thank you.

10 JUDGE MELLOY: Mr. Salopek, we'll resume  
11 the examination. I just need to remind you that  
12 you're still under oath, and the admonitions about  
13 communications with anyone from the outside are still  
14 in effect. All right. Mr. Wechsler, you may resume.

15 MR. WECHSLER: Thank you.

16 DAVID SALOPEK,  
17 having been previously duly sworn, testified further  
18 as follows:

19 FURTHER DIRECT EXAMINATION

20 BY MR. WECHSLER:

21 Q. Good morning, Mr. Salopek. Can you say  
22 something again, Mr. Salopek? We didn't hear you.

23 MR. WECHSLER: Your Honor, could we just  
24 take a moment and see -- we apparently are having  
25 technical difficulties. We checked this earlier but

1 are now having trouble.

2 A. Can you hear me now?

3 Q. (BY MR. WECHSLER) Yes, we can.

4 A. Okay. Easy fix.

5 Q. Yesterday, when we left off, we were about to  
6 turn to the subject of farm irrigation management, and  
7 to do that, I'll ask that we put up the New Mexico  
8 demonstrative again for purposes of your testimony.  
9 That's New Mexico demonstrative 34, and this time,  
10 we're going to look at Page 3. Let me ask you: How  
11 much water is needed to irrigate an acre of pecans?

12 A. Approximately 4 to 6 acre-feet.

13 Q. Why the variance between 4 and 6?

14 A. Soil type has a lot to do with it. Your  
15 heavy clay soils will use less water, and your very  
16 sandy soils will use more. The -- and it also depends  
17 on the year. Crop load will have a factor on that.  
18 Pecan trees will alternate bear when they have a big  
19 crop and a smaller crop, and the larger-crop years  
20 will have a little bit more water use.

21 Q. And is the reason that clay soils need less  
22 water because clay retains more water?

23 A. Yes. They have a much greater water-holding  
24 capacity.

25 Q. Even though it might be a different amount of



1 water put on the acreage, 4 to 6 acres, is the tree  
2 still consuming the same amount of water?

3 A. Yes. Regardless of the soil type, the tree  
4 will use what the tree needs, and that's what goes  
5 through the roots, through the trunk, through the  
6 leaves to the crop to produce every -- the -- what  
7 we're trying to do is grow pecans. So the soil is the  
8 median that the tree is in.

9 Q. Is there a general understanding about how  
10 much water is needed to grow pecans in the LRG region?

11 A. Yeah. It's 4 to 6 acre-feet. There's an  
12 average out there that is at 5-and-a-half.

13 Q. How about the amount that the tree actually  
14 uses/consumes?

15 A. That's the CIR, which is consumptive  
16 irrigation requirement. That is 48 inches.

17 Q. That's the amount of water that actually is  
18 used by the tree?

19 A. Yeah. That's what goes through the root  
20 system, through the tree, through the leaves, through  
21 the pecans and the crop and then it's -- from your  
22 growing season, it will measure out to be right around  
23 48 inches.

24 Q. Have there been studies in the lower Rio  
25 Grande that you've used in your operations?

1           A.    Yes, there is. We actually participated in a  
2 large study that was started in 2002 and went through  
3 two complete crop cycles, which was important because  
4 you had two off crops and two on crops, and the  
5 average consumptive irrigation requirement ended up  
6 being right around 48 inches, maybe a hair higher if  
7 memory serves me right, and the farm delivery  
8 requirement, which is the FDR, that's the exact amount  
9 of water that you're applying to the field. So the  
10 difference of the 48 and the 5, 5-and-a-half that  
11 you're applying is what percolates into the soil a lot  
12 of times, but the 48 inches is what goes through the  
13 tree, but we applied 5-and-a-half to -- 5 to 6  
14 acre-feet during those crop cycles.

15           **Q.    That was a study conducted on your property.**  
16 **When was that study conducted?**

17           A.    It started in 2002, and I believe it  
18 completed at the end of the 2005 season.

19           **Q.    Based on your years of experience in**  
20 **nationwide and regional pecan organizations, is that**  
21 **amount of water consistent with the amount of water**  
22 **that pecans use nationwide?**

23           A.    Yes, it is. It's understood through the  
24 different studies, whether it's Arizona, West Texas,  
25 and the western region, those studies are very

1 consistent that have been done. But even if you go  
2 all the way to the southeast where Georgia is, they  
3 happen to be in a 60-inch rain belt, so they get 5  
4 feet of water a year. Those farmers over there still  
5 have sprinkler systems inside those orchards to  
6 supplement the 5 feet of water they get through  
7 rainfall.

8 Q. Looking back at New Mexico Demonstrative  
9 Exhibit 34, Page 3, what sources of water do you use  
10 to irrigate?

11 A. We use surface water, which is EBID water,  
12 and we use groundwater.

13 Q. I want to turn to another exhibit to talk  
14 about surface water. That's Joint Exhibit 421. Do  
15 you recognize this document?

16 A. Yes. I have seen this before on EBID's  
17 Website.

18 Q. This is a description from EBID, including  
19 irrigation information. It's already been admitted.  
20 And the part I want to ask you about is under the  
21 heading, "Assessment," and it's that last paragraph in  
22 the first column on the left. We can see a  
23 description here about the assessment. Do you pay an  
24 assessment to EBID every year?

25 A. Yes, we do.

1           Q.    When is the amount of the assessment from  
2   EBID announced?

3           A.    Typically in November.

4           Q.    What's your understanding of the purpose of  
5   the assessment? Please feel free to use the exhibit  
6   if that's helpful.

7           A.    It's to cover the operating cost of the  
8   district. That's the maintenance of the  
9   infrastructure and the salaries of the employees and  
10   purchase of any equipment they might need, repairs on  
11   equipment. So it's general operation of the -- of the  
12   district.

13          Q.    Is the dollar amount of the assessment  
14   adjusted depending on the amount of surface water that  
15   is available?

16          A.    No.

17          Q.    Is the assessment based on an amount per  
18   acre?

19          A.    Yes.

20          Q.    What -- if -- let's go back to Demonstrative  
21   Exhibit 34, Page 3. What was the assessment per acre  
22   in 2021?

23          A.    It was \$90 an acre.

24          Q.    What was your total EBID payment that year?

25          A.    Approximately 156,000.

1           Q.    Is water allotted to EBID members on a  
2 per-acre basis, as well?

3           A.    Yes, it is.

4           Q.    Does EBID guarantee an amount of water per  
5 acre if you pay your assessment?

6           A.    No, they don't.

7           Q.    How much water was allotted to EBID members  
8 in 2021?

9           A.    It was 4 inches, approximately one-third of  
10 an acre-foot.

11          Q.    Do you use all of your surface water each  
12 year?

13          A.    Yes, I do.

14          Q.    Now, you indicated earlier that pecans take  
15 much more than 4 inches, consume 48 inches, and -- and  
16 you need to put on the fields 4 to 6 acre-feet. Can  
17 you give us an example of how you used that 4 inches  
18 in 2021?

19          A.    Well, this year, they did not open the head  
20 gates at the reservoirs until the first of June, and  
21 at that time, you're able to call in an order -- put  
22 in an order for acreage that you want to irrigate. So  
23 what I did is as soon as the water was available, I  
24 placed orders on all the farms that had irrigations  
25 coming up, and we applied the EBID water as soon as we

1 got it to those acreages.

2 Q. How many irrigations did that 4 inches give  
3 you?

4 A. One and just a hair.

5 Q. In 2021, do you know when EBID had used all  
6 of its project allocations so that it stopped taking  
7 project water?

8 A. I believe it was right around the first of  
9 July.

10 Q. In 2021, do you know when EP No. 1 had used  
11 all of its project allocation?

12 A. I don't know exactly the day, but I remember  
13 seeing water still in the system the first week or two  
14 of September, so 70 days after we were off.

15 Q. In your experience since 2008, is it common  
16 for EBID to use all of its project allocation before  
17 EP No. 1?

18 A. That has been the common situation since  
19 2008.

20 Q. In a year like 2021 when EBID uses all of its  
21 project allocation first before EP1, do you know if  
22 EBID continues to have tasks related to the surface  
23 water?

24 A. Yes. EBID's employees, the ditch riders on  
25 those ditch that carry the water to Texas are still

1 monitoring that water, and the ditches are keeping  
2 clean and they're making sure the water makes it to  
3 Texas. So, yeah, they're still operating on those  
4 canals, best of my knowledge, 24 hours a day.

5 **Q. Is that part of your assessment that pays for**  
6 **that?**

7 A. Yes. We are -- we are paying for monitoring  
8 Texas water to go through our system.

9 **Q. Does anyone track the amount of surface water**  
10 **that you use?**

11 A. EBID does, and I do.

12 **Q. Turning to groundwater use on your farms,**  
13 **have you investigated when the original groundwater**  
14 **wells on your main farm were drilled?**

15 A. Yes. After my father passed away, Bill  
16 Stahmann, our neighbor, mentored my mom and I and  
17 helped us with various farming tasks and understanding  
18 how to pecan farm, and one of the important things  
19 that he emphasized to us was trying to develop  
20 historical records, finding any old record about when  
21 wells were drilled, and keeping track of your water  
22 use through water records. So we -- we did that, and  
23 we discovered that the first well that was drilled on  
24 our main farm was in 1948, and then --

25 **Q. What about --**

1           A.     And then we had subsequent wells that were  
2 drilled in '50 and '51.

3           **Q.     Based on your records and research, do you**  
4 **know why the wells on your main farm were drilled?**

5           A.     Yes.  Things were starting to dry out a  
6 little bit in the district so the wells were put in to  
7 supplement the crops so they could finish them out or  
8 start them if there was a later release date.  So the  
9 wells were used to take care of our crops so you  
10 wouldn't lose them.

11          **Q.     Did your family have to obtain any loans in**  
12 **order to drill the wells?**

13          A.     I'm sure they did.  We owed a lot of money  
14 over the years.

15          **Q.     How about when your father transferred the**  
16 **farm to you, were there loans on the property based on**  
17 **well use?**

18          A.     Yes.  We owed a lot of money when my father  
19 died, and he had put in two deep wells prior to his  
20 death in '77/'78.

21          **Q.     And today -- I'm sorry to interrupt.  Please.**

22          A.     Go ahead.  I was -- anyway, yeah, we -- we  
23 definitely had a lot of debt.

24          **Q.     In today's dollars, approximately how much**  
25 **does it cost to drill a new well?**



1       A.     Drilled a new deep well last year, and the  
2     cost of that well was \$335,000.

3       Q.     Do you need a permit from the New Mexico  
4     state engineer to use groundwater?

5       A.     Yes, we do.

6       Q.     Are you familiar with the application process  
7     to the state engineer?

8       A.     I am.

9       Q.     We will have folks from the state engineer  
10    testify to that, but can you please summarize your  
11    understanding of that application process?

12      A.     Well, if you have -- if you need to put in a  
13    well for well failure, supplemental well, you'll go to  
14    the state engineer's office and you will talk to the  
15    tech who's going to help you there, and they will  
16    determine if you have water rights, first of all, and  
17    then you will show them where you're thinking about  
18    putting the well on your -- on a map. They have a lot  
19    of aerial maps in there, and then after that, you will  
20    describe to them approximately how deep you think  
21    you're going to put the well in, and then you will --  
22    they'll get the coordinates, then you'll get a legal  
23    description, you'll put it in a newspaper, it'll be  
24    advertised for, I think it's three weekends -- three  
25    weeks, maybe four, but I know it's a significant

1 amount of time, and then if there's no issues with  
2 your application, then you will be issued a permit.

3 Q. Does that notice period provide an  
4 opportunity for other individuals and water users to  
5 protest?

6 A. Yes, it does.

7 Q. Do you have well permits on all of your  
8 groundwater wells?

9 A. Yes, we do.

10 Q. How many total wells do you have on all of  
11 your farms combined?

12 A. 32.

13 Q. Does that mean you've gone through the  
14 application and permitting process on all of those  
15 wells?

16 A. They have all been permitted, yes.

17 Q. During that process, did the United States,  
18 Texas, EBID, or EP1 protest any of those 32 wells?

19 A. No.

20 Q. Before we leave this demonstrative exhibit  
21 here, New Mexico Demonstrative 34, Page 3, at the  
22 bottom here, you indicate that the variable operating  
23 cost is \$305,000. What does that mean?

24 A. That's been the average electric utility cost  
25 that I have spent on my pecan operation for the last

1 four years, five years.

2 Q. As we continue to talk about your water  
3 permits, let's look at one of those permits on Page 4  
4 of this demonstrative exhibit. Do you recognize this  
5 permit?

6 A. Excuse me a second.

7 Q. It is small.

8 A. Yes, I do.

9 Q. And let's -- we can see the date it was  
10 received, and you can see the state engineer stamp  
11 there in the upper right-hand corner. So 92, 93.  
12 Let's highlight Paragraph 7 there. You can see here  
13 that it's an application to combine the wells and  
14 commingle the water. What's your understanding of  
15 what this permit allows?

16 A. Well, the reason we applied for this permit  
17 is we had bought some neighboring farms next to our  
18 farm, and if you look over here on top, you'll see the  
19 LRG 1872 and then all the S's are supplemental. If  
20 you look down here, it's LRG 2041. Those were the  
21 wells on the neighboring farm that we had purchased,  
22 so we combined and commingled all those wells together  
23 so we can irrigate any acre of land on that farm with  
24 any of those wells.

25 Q. Are you familiar with the owner management

1 plans, or O-W-M-A-N, used by the state engineer to  
2 administer water rights today?

3 A. Yes, I am familiar with them.

4 Q. What do OWMAN plans do?

5 A. They recognize your historical use of water  
6 amongst your operation, and it's like a larger version  
7 of the combine and commingle permit that we saw here.  
8 It allows you, if you have farms that are many miles  
9 away, you're not going to be running water down the  
10 canal to get to them, but you can transfer your  
11 district water and irrigate it on that particular farm  
12 because some farms have an easier times of getting  
13 district water than other farms. Some farms are  
14 cheaper and faster to irrigate with district water  
15 than it is with well water, depending on what you  
16 have, and also, like at the end of the season, for  
17 example, in 2021, we had remnants of water that was  
18 left over when we had irrigated the farm so we --  
19 remnants of EBID water, so we transferred all that  
20 water to one farm and then we irrigated that farm with  
21 the remnant EBID water, and what OWMAN did is it  
22 recognized the historical practices of using water in  
23 our valley of our putting water to historic beneficial  
24 use basically.

25 Q. We're looking at one type of permit here. Do

1     **you have other types of permits from the Office of the**  
2     **State Engineer?**

3         A.     Yes, I do.

4         **Q.     What are some of those types of permits?**

5         A.     We have done well replacement permits, and  
6     then we have --

7         **Q.     Stop there.**

8         A.     Go ahead.

9         **Q.     Well, what's -- what's a replacement permit?**

10        A.     You know, a well that gets old and fails,  
11     collapses in upon itself, various reasons why. I had  
12     one well actually that was drilled on a fault, and we  
13     had some smaller quake in the valley there, and it  
14     broke the well in half, so I had to replace it. So  
15     there's things that can happen to these wells, and  
16     you'll have to replace them from time to time. That's  
17     a well replacement, and the other types of permit that  
18     I have are supplemental well permits.

19        **Q.     What's a supplemental well permit?**

20        A.     It allows you, if you have your original  
21     well, and you want to try and develop a bigger head of  
22     water so you can actually use less water, it allows  
23     you to drill another well that will help push the  
24     water along so it'll be a more efficient use of water.

25        **Q.     Are those supplemental well permits? Do they**

1 allow you to pump new water or increase your water  
2 use?

3 A. No, they don't.

4 Q. Do your state engineer permits limit the  
5 amount of water you can use?

6 A. Yes, they do.

7 Q. How?

8 A. It's stated on our permit, the amount of  
9 water that you can use on all those wells,  
10 supplemental wells, or whatever it is, and whether  
11 it's a 5.5 FDR, I have some that are that, I have some  
12 that are 4.5 FDRs, and you cannot go over the amount  
13 of 4.5 between EBID water and well water combined.

14 Q. To break that out a little bit, your permits  
15 have a maximum amount of water that can be used under  
16 the permit and then there is also a maximum amount of  
17 water that can be used on each acre; is that correct?

18 A. That is correct.

19 Q. Are all of your wells metered?

20 A. Yes, they are.

21 Q. Does anyone keep track of how much  
22 groundwater you use?

23 A. I do, and the state engineer does.

24 Q. Do OSE water masters periodically check your  
25 wells?

1           A.     Yeah.  They're checking them all the time.

2           Q.     I want to turn to New Mexico Demonstrative  
3     Exhibit 34, Page 5.  We see here at the top a  
4     reference to Block 37, Well 303.  Can you tell us what  
5     Block 37, Well 303 is?

6           A.     Block 37 is one of my pecan farm blocks, and  
7     Well 303 happens to be the well that's on that block.

8           Q.     This is also an exhibit.  Let's look at that  
9     version.  It's New Mexico 2077.  Is this the same  
10    document we were just looking at?

11          A.     It appears to be, yes.

12          Q.     Was this a document created by you or under  
13    your supervision?

14          A.     Yes, it is.

15          Q.     For what purpose?

16          A.     Well, in order to know what you're doing on  
17    farming, you have to keep track of the dates you  
18    irrigate, and this is basically signifying the dates  
19    that we irrigated that particular block in that given  
20    year.

21          Q.     Do you use this document in your farming  
22    operations?

23          A.     Yes, we do.

24          Q.     Do you keep it in your business records in  
25    the normal course of business?

1           A.     Yes, we do.

2           Q.     Did you produce this document in response to  
3     a subpoena from Texas?

4           A.     Possibly. I don't remember exactly, but I  
5     might have.

6           Q.     You did produce a number of documents in  
7     response to a subpoena?

8           A.     Yes.

9                   MR. WECHSLER: Your Honor, I offer New  
10    Mexico Exhibit 2077.

11                  JUDGE MELLOY: Any objection?

12                  MS. KLAHN: Your Honor, could I voir  
13    dire the witness about this?

14                  JUDGE MELLOY: You may.

15                  MS. KLAHN: Mr. Salopek, my name is  
16    Sarah Klahn. I represent the State of Texas. If you  
17    -- I understood your testimony that this particular  
18    document is kept in the ordinary course of business.  
19    If we went into your files, would we find identical  
20    documents for -- in this format with this type of  
21    setup to show the different water uses for years prior  
22    to 2011?

23                  THE WITNESS: I have documents that are  
24    similar to this. I have some that reflect the same  
25    information in a different form.



1                   **MS. KLAHN:** So was this document in this  
2 format created at the direction of counsel?

3                   **THE WITNESS:** No.

4                   **MS. KLAHN:** How did you come up with  
5 this document?

6                   **THE WITNESS:** I had an intern who worked  
7 for me a few years ago, and we put this together.

8                   **MS. KLAHN:** Your Honor, my concern is  
9 simply that this sounds an awful lot like expert  
10 testimony when you get into this question of was this  
11 created by you or under your direction. The fact that  
12 he has similar information but not in this format in  
13 his records suggests to me that this might be pushing  
14 the envelope in terms of percipient testimony. We  
15 don't object to this in the demonstrative context  
16 because as Mr. Wechsler has said on numerous  
17 occasions, what's in the demonstrative exhibit doesn't  
18 matter, it's the testimony. So I would object to  
19 this, but we don't object to the demonstrative that  
20 has the same information.

21                   **MR. WECHSLER:** Your Honor --

22                   **MR. LEININGER:** Your Honor, the United  
23 States -- the United States joins in that objection.  
24 We don't object to this being used as a demonstrative.  
25 We do object to it being admitted.

1                   **MR. WECHSLER:** Your Honor, if I may  
2 respond.

3                   **JUDGE MELLOY:** You may.

4                   **MR. WECHSLER:** He's laid sufficient  
5 foundation. He testified that he created this in the  
6 normal course of business. It had nothing to do with  
7 the litigation despite Ms. Klahn's unfounded  
8 suspicions. He uses it as part of his business. He  
9 is a percipient witness who is going to testify to  
10 exactly how he has used that in the past. That's  
11 precisely what a fact witness does. We're not asking  
12 him to offer any kind of expert opinion.

13                  **JUDGE MELLOY:** And as I understand it  
14 from the witness, the blue refers to well water, and  
15 the pink or whatever that color is, is canal water; is  
16 that right?

17                  **THE WITNESS:** Yes, sir.

18                  **JUDGE MELLOY:** And canal water, does  
19 that mean EBID water?

20                  **THE WITNESS:** Yes, it does.

21                  **JUDGE MELLOY:** Well, I -- I think the  
22 witness has laid sufficient foundation that it's  
23 created in the ordinary course of business and is a  
24 business record so I'll overrule the objection. The  
25 exhibit is admitted.

1           Q.     (BY MR. WECHSLER) Mr. Salopek, can you please  
2     **explain what this spreadsheet shows?**

3           A.     Sure. If you go to the top number and start  
4     in 2011, that 32411 was the first irrigation of that  
5     season on that block. If you go to '12, the first  
6     irrigation of that season was '09. '13 was March  
7     14th, et cetera, all the way through, and it allows  
8     you to see the original dates that we irrigated that  
9     particular block and then every date after that is a  
10    subsequent irrigation. As you go through the season,  
11    you'll see that the irrigation dates get a little bit  
12    tighter, and on those particular years, like in '11,  
13    it made more sense to transfer my EBID water to  
14    another farm so that farm only received well water.  
15    You can look at 2017, for example, where we had more  
16    canal water, and you can see more of the -- I'm  
17    calling it taupe, colors for the 2017, and then at the  
18    bottom down there, it's the total amount of  
19    irrigation, and you can see they fluctuate a little  
20    bit between 16 and 12 at a low, and in 2019, it was  
21    not completed because we didn't ever finish it out.  
22    When we were doing this, the season wasn't complete  
23    yet when I lost my intern. The -- and if you -- just  
24    to give you a little explanation, just as a sidebar  
25    note, you see the date is not always the same when we

1 started irrigation season. It fluctuates. And that  
2 indicates whether we had a wet winter or a dry winter.  
3 So if we got no moisture over the wintertime, you'll  
4 see an irrigation start date like 3/9 because the  
5 ground is very dry. So if it had moisture in it, we  
6 would start a little bit later.

7 **Q. That's when you start your irrigation at the**  
8 **beginning of the season. During the irrigation**  
9 **season, how do you decide when to irrigate?**

10 A. We use three methods. Calendar obviously is  
11 one that you're looking at here. We use a instrument  
12 called a tensiometer, and you put it in the ground  
13 about 16 to 18 inches deep, 15 inches, and it has a  
14 ceramic tip on the bottom. You fill it with water.  
15 It has a gage on it and as the ground dries out, it  
16 pulls moisture out of the ceramic tip, and you'll see  
17 a higher reading on the gage. The higher the number,  
18 the drier the ground is. We also use a handheld soil  
19 probe that you can stick in the ground, and over the  
20 years in using tensiometers and using a soil probe,  
21 you have a really good idea what's happening with the  
22 soil. So those are the methods we use to determine  
23 irrigation. A lot of experience.

24 **Q. (BY MR. WECHSLER) You mentioned this when Ms.**  
25 **Klahn was asking you some questions, but have you kept**

1 records of your past water use?

2 A. We have.

3 Q. During the time that you've been tracking,  
4 has your water use on your farms remained consistent  
5 or stable?

6 A. I would say stable. They fluctuate a little  
7 bit just depending on environmental elements and size  
8 of crop.

9 Q. Let's turn to New Mexico Demonstrative  
10 Exhibit 34, Page 36. Here you can, see, Mr. Salopek,  
11 at the top it says, "2020 water usage recap." Do you  
12 see that?

13 A. Yes.

14 Q. Again, I'm going to turn your attention to  
15 the actual exhibit in this matter, which is Exhibit  
16 New Mexico 990. You recognize this as the same  
17 document we were just looking at on the demonstrative  
18 exhibit?

19 A. Yes, I do.

20 Q. Was this a document that was created by you  
21 or under your supervision?

22 A. Yes. It was created in office.

23 Q. Was it created by you as part of your farming  
24 operations?

25 A. Yes. This was created when we had to start

1 keeping exact track of our water. This is what I used  
2 to track it.

3 Q. And to Ms. Klahn's point, did you create this  
4 for purposes of this litigation?

5 A. No, sir.

6 Q. Do you keep this document in your business  
7 records in the normal course of business?

8 A. I do.

9 Q. Did you produce this document as part of your  
10 response to the subpoena?

11 A. I don't remember. I could have. I don't  
12 remember.

13 MR. WECHSLER: Your Honor, I offer New  
14 Mexico 990.

15 JUDGE MELLOY: Any objection?

16 MS. KLAHN: No objection.

17 JUDGE MELLOY: 990 is admitted.

18 Q. (BY MR. WECHSLER) Mr. Salopek, can you please  
19 explain what we're looking at with this spreadsheet?

20 A. Yes. It's pretty busy so -- but I will try  
21 to -- if you can go to the far left side there,  
22 everything is what I call each of those individual  
23 farms.

24 Q. Do you want us to call -- sorry. Do you want  
25 us to call any part of it out? Do you want --

1       A.     Well, I'm going to talk about the main farm  
2 because once you understand how it works, you can look  
3 at any farm and understand how it works.

4       **Q.     All right. We're going to call out -- let's**  
5 **do the top column, as well.**

6       A.     Okay.

7       **Q.     The row.**

8       A.     As we have gone through the adjudication, you  
9 look there, and you see the EBID acreage, the deeded  
10 acreage, and the OSE, which stands for the Office of  
11 State Engineer. Our deeded acreage is what we  
12 physically paid for when that farm was bought, 599.37  
13 acres, approximately 600 acres. The EBID acreage is  
14 the amount that we pay EBID for the assessment, which  
15 is 555 acres, and the 539 is the amount that the state  
16 engineer had determined that we were allowed -- that  
17 we were irrigating, so we had been cut back on the  
18 actual acreage that we own. The next column over  
19 there is available well water and then the next column  
20 over is available EBID water and then the next column  
21 is total water available. So when you look at that,  
22 this particular year, this was 2020, so this was last  
23 year's chart. I think it was December of 2020. If  
24 you look at the OSE EBID water available, that's -- we  
25 had 1.167 acre-feet from EBID. This particular farm,

1 the main farm, has a 5.5 FDR that we have applied for,  
2 and it is -- or entered evidence of the usage of that  
3 amount of water rather, and so you subtract 5.5. You  
4 subtract 1.167 from 5.5, and that gives you 4.333  
5 acre-feet of well water you can use. Does that make  
6 sense? Any questions so far?

7 Q. I think I understand what you're saying. So  
8 you're --

9 A. Okay. So --

10 Q. Sorry. You're -- when you get the 4.33,  
11 that's from that top column, and then the available  
12 EBID water, the 1.167, that's from the column, the  
13 fourth column; is that right?

14 A. Right. And the one that -- that we are  
15 measured on is the OSE number. The other ones are on  
16 there just for my benefit of what I -- what I feel I  
17 should have, but anyway, I don't. The -- and then you  
18 have the total water available over there, so as you  
19 go through the season, you can see the OSE total water  
20 available was 2,969.34, and then if you go to the  
21 total water used to date, I used 2,935 acre-feet.  
22 That gave me the amount of water I used was 5.436.  
23 You can see that my deeded acreage, had I had that  
24 recognized would have been 4.8, and if you look at the  
25 EBID number, it was 5.2. And then if you go to the



1 rear column, you see the OSE number. I was very close  
2 to the 5.5, but it was .064 was the amount of water  
3 that I had remaining that I did not -- that I could  
4 have used that I did not use.

5 Q. And just to make sure we're on the same page,  
6 when you're looking at the column that says "total  
7 water used to date" and "remaining water balance,"  
8 that's in total acre-feet, right?

9 A. That is correct.

10 Q. But the -- the next column over,  
11 the "acre-feet used to date," the 5.4, that's on an  
12 acre-foot per acre basis?

13 A. That is correct.

14 Q. If we back out of this document -- the call  
15 out, and we look at the -- well, you actually do this  
16 for each of your farms; is that right?

17 A. That is correct.

18 Q. And then at the bottom, you can see a column  
19 there that says "totals"?

20 A. Yes.

21 Q. And is that a total for all your farms?

22 A. That is an average, because of the OWMAN that  
23 we have. So if you look over here, our total usage  
24 was on the OSE acre-feet used to date, the total usage  
25 for the whole year was 4.574 acre-feet, and my average

1 for everything, I could have used .774 more over  
2 everything.

3 **Q. Can you explain what you do to decide whether**  
4 **to use surface water or groundwater?**

5 A. First of all, if surface water is available.  
6 That's the first thing you would consider. And if  
7 it's available, then you will place your orders and  
8 try to use it in a timely fashion, especially like  
9 this year because we only had one month to use it.  
10 And then the rest of the time is going to be relying  
11 on well water.

12 **Q. Are there advantages to either surface water**  
13 **or groundwater?**

14 A. Well, surface water is better quality water.  
15 You typically will have a little bigger head of water  
16 so it's a little more efficient to irrigate with,  
17 saves you in labor. You can apply -- you know, the  
18 bigger the head of the water, the less water you're  
19 going to put on the field because you can travel  
20 across it faster.

21 **Q. Please.**

22 A. Go ahead.

23 **Q. You also mentioned that there's higher costs**  
24 **with groundwater; is that right?**

25 A. Absolutely. I mean, energy cost, every drop

1 of water that you're putting on at the well has an  
2 energy cost of some form to it.

3 Q. Let's look at those energy costs, and let's  
4 look at New Mexico Exhibit -- well, let's look at the  
5 Demonstrative 34, Page 7, and then let's turn to the  
6 actual exhibit, which is New Mexico 984. Do you  
7 recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. This is what we do every year to track our  
11 kilowatt usage.

12 Q. If we turn to Page 4 of this document, is  
13 this the same document we were just looking at in New  
14 Mexico Demonstrative 34, Page 7?

15 A. Yes, it is.

16 Q. This is the energy usage on all farms; is  
17 that right?

18 A. Everything that has an electric well on it,  
19 yes.

20 Q. Was this document created by you or under  
21 your supervision?

22 A. Yes, it was.

23 Q. For what purpose?

24 A. It's just interesting to track our kilowatt  
25 hour usage every year so at the end of the season, I

1 always like to see how it compares.

2 Q. And was this document created in the normal  
3 course of business or created for litigation?

4 A. No. It's something we do every year.

5 Q. Do you use this document in your farming  
6 operations?

7 A. Yes, we do.

8 Q. Do you keep it in the normal course of  
9 business?

10 A. Yes, we do.

11 MR. WECHSLER: Your Honor, I'll offer  
12 New Mexico Exhibit 984.

13 JUDGE MELLOY: Any objection?

14 MS. KLAHN: Yes, Your Honor. Could I  
15 voir dire?

16 JUDGE MELLOY: You may.

17 MS. KLAHN: Mr. Salopek, you started  
18 tracking kilowatt hours in 1993? You don't have any  
19 records prior to that; is that right?

20 THE WITNESS: That's as far as I had my  
21 intern go back to.

22 MS. KLAHN: And what was the source of  
23 information that your intern used?

24 THE WITNESS: Electric meter bills.

25 MS. KLAHN: So it was literally the bill

1 from the electric power company that they consulted.

2 THE WITNESS: Yes.

3 MS. KLAHN: And was there any adjustment  
4 made for changes in the electric grid that might have  
5 changed the way that the kilowatt hours were tracked?

6 THE WITNESS: I don't believe there was  
7 any changes with the grid.

8 MS. KLAHN: But you're familiar with  
9 what I'm talking about?

10 THE WITNESS: Not really.

11 MS. KLAHN: Okay. Your Honor, my  
12 concern about this is I don't know that it is  
13 meaningful. It may reflect what was on his electric  
14 bill, but there are sort of notorious problems with  
15 kilowatt hour data, especially when it relates to well  
16 pumping, so I just don't think it's reliable, and if  
17 he wants to testify from the demonstrative about what  
18 his understanding of his electric bill has been,  
19 that's fine, but I don't think this should go into the  
20 record.

21 MR. WECHSLER: Again, Your Honor, it's  
22 in the same unit, kilowatt hours. Ms. Klahn seems to  
23 be suggesting that there are notorious problems.  
24 There's no evidence of that whatsoever. He simply  
25 used records he has in his farming operations, created

1 these in order to track the amount of water he's using  
2 for well pumping and -- and uses that as part of his  
3 normal operations.

4 JUDGE MELLOY: All right. I'll admit  
5 the exhibit. 984 is admitted.

6 Q. (BY MR. WECHSLER) Mr. Salopek, can you please  
7 explain what we're looking at here on Page 4 of New  
8 Mexico Exhibit 984?

9 A. Well, it's -- if you look at it, you can see  
10 when we had high water, river water in '93, we had low  
11 kilowatt usage, and as you look at it, you can start  
12 to see that the drought had begun in -- kind of in '99  
13 and continued and then we had a -- in 2003, you can  
14 see we -- I think we got 3 or 4 inches of surface  
15 water that year. So you can see a very large use of  
16 kilowatt hours that year, and then there was a little  
17 more surface water so it's very reflective of the  
18 amount of surface water we get. So, like, when I was  
19 talking about my irrigation sheet here a couple of  
20 slides back in 2017, if you remember, had more  
21 irrigation dates from the district. If you look at  
22 2017, you can see it actually went down on kilowatt  
23 usage, so it is very reflective of -- of the amount of  
24 water that we're getting from the district, and as you  
25 look at it from the time the operating agreement

1 started, it's trended higher.

2 Q. You indicated 2017 was a higher surface  
3 water. What are your average energy costs in a year  
4 like 2017 when the allocation is higher?

5 A. Around \$75 an acre.

6 Q. What are your typical energy costs in a year  
7 when the project allocation is low, only several  
8 inches?

9 A. It's been running \$150 an acre, more or less.

10 Q. Let's turn back to New Mexico Demonstrative  
11 Exhibit 34, Page 8 this time. Using this page as a  
12 guide, Mr. Salopek, can you please summarize your  
13 fixed and variable costs?

14 A. Our fixed costs are going to be the EBID  
15 assessment. We're going to pay that every year up  
16 front, and depending on how much water we get from  
17 EBID will reflect on our variable cost of the energy  
18 that we have to use with wells. So EBID is more fixed  
19 cost, and then availability of water will help  
20 fluctuate the -- the cost of our energy that we have  
21 to use to irrigate wells.

22 Q. Let's turn to Demonstrative Exhibit 34, Page  
23 9. How important is it for commercial orchards to  
24 have timely irrigation?

25 A. It's incredibly important.

1           **Q.    Tease that out a little bit.  In your**  
2 **experience, what's the impact of a lack of irrigation**  
3 **water during the spring?**

4           A.    You'll make your trees sick.  They'll get  
5 really thin leaves.  They'll be kind of almost see  
6 through, and they'll be, you know, struggling.

7           **Q.    In your experience, what's the impact of a**  
8 **lack of irrigation water during the summer?**

9           A.    When it gets hot, if you don't have enough  
10 water to get through the peak hot time of the year,  
11 you'll probably have tree death.  If nothing else, the  
12 tree will die back to the trunk, but I've seen trees  
13 die in the middle of the summer without sufficient  
14 water.

15          **Q.    In your experience, what's the impact of a**  
16 **lack of irrigation water during the fall?**

17          A.    In the fall is highly critical.  That's when  
18 you're, as I had discussed earlier about monsoonal  
19 rains and the crop maturing age, if you do not have  
20 adequate water in the late part of the season, I've  
21 seen trees abort most of their crop by missing  
22 irrigation date in as little as three days, so if you  
23 went weeks without water, you would abort the whole  
24 crop or if it didn't abort it, you would have an  
25 entire crop look like that picture on the left there.



1           **Q.     In your experience --**

2           **A.     Un-edible.**

3           **Q.     In your experience, what's the impact on**  
4 **pecans of a year-long irrigation of deficit water --**  
5 **of irrigation water?**

6           **A.     You're going to have severe tree death, and**  
7 **if they die back to the trunk, you have killed most of**  
8 **your roots, also. So the consequences of that are**  
9 **just -- it would not really be a viable orchard any**  
10 **more.**

11          **Q.     Have you personally seen any effects of low**  
12 **project water supply on pecans in the LRG and New**  
13 **Mexico?**

14          **A.     Yes, I have. Starting in 2003 when we only**  
15 **had one irrigation, there were lots of orchards up and**  
16 **down the valley that did not have access to well**  
17 **water, and there's many, many dead orchards up and**  
18 **down the valley now.**

19          **Q.     Turn our attention to the New Mexico pecan**  
20 **growers. What kind of organization is the New Mexico**  
21 **pecan growers?**

22          **A.     It is a nonprofit group for the benefit of**  
23 **New Mexico pecan growers.**

24          **Q.     Why was it formed?**

25          **A.     Previously, the only organization that we had**

1 in the area was Western Pecan Growers Association,  
2 which was West Texas, New Mexico, Arizona, and  
3 California. That organization was formed in 1966 to  
4 1967. As the pecan industry grew in New Mexico, there  
5 became opportunities for marketing money from the  
6 State of New Mexico. We had legislative people that  
7 wanted to talk to New Mexico pecan growers. So we  
8 just didn't have an organization that could fill the  
9 needs just for New Mexico issues so we formed it in  
10 2001.

11 **Q. What has been your role in the New Mexico**  
12 **Pecan Growers?**

13 A. I was a founding member, and I was president  
14 for the first ten years.

15 **Q. Are you still a board member?**

16 A. Yes, I am.

17 **Q. What's the membership of the New Mexico Pecan**  
18 **Growers?**

19 A. Roughly 300 members.

20 **Q. Do you know how many acres they represent?**

21 A. Close to 30,000.

22 **Q. Let's look at New Mexico Exhibit 470. Do you**  
23 **recognize this document?**

24 **MR. WECHSLER:** This has been admitted,  
25 Your Honor.

1           Q.    (BY MR. WECHSLER) We can see, Mr. Salopek, if  
2   you back out, your signature at the bottom here.

3           A.    Yes, I recognize this.

4           Q.    What is it?

5           A.    It was a letter that we sent out to our  
6   membership because of the active AWRM regs, active  
7   water resource management that came out. I had  
8   attended a evening meeting some time in early  
9   November, and the state engineer was talking about the  
10   new regulations they were going to impose on the lower  
11   Rio Grande, and alarm bells went off after I heard  
12   their talk.

13          Q.    And if we call out that first paragraph, we  
14   can see what you're referring to, the Active Water  
15   Resources Administration. Sometimes those are called  
16   Active Water Resources Management; is that right?

17          A.    That is correct.

18          Q.    You used the term AWRM. Does that refer to  
19   those proposed organizations?

20          A.    That was an acronym that was used mostly.

21          Q.    Sometimes people say A-W-R-M, and that's the  
22   same thing, right?

23          A.    Yes, sir.

24          Q.    Let's back out of here and look add the  
25   numbered paragraphs here. In the first paragraph,

1     you're indicating a concern about the possible  
2     limitation of 4 acre-feet. Do you see that?

3         A.     Yes. I do.

4         Q.     Can you please explain why that was a concern  
5     for the New Mexico Pecan Growers?

6         A.     Sure. We had just gotten done with that  
7     study on my farm that was showing that we were using 5  
8     to 6 acre-feet of water to grow a commercial crop, and  
9     we had been putting our water to historic beneficial  
10    use for 60 to 70 years and all of a sudden, we didn't  
11    have our day in court to prove up our water. This was  
12    taking away all the administration that the state had  
13    put in place.

14        Q.     Did you have any other concerns about the  
15    AWRM proposed in --

16        A.     Yeah, there was. Besides the 4 acre-feet  
17    deal, it got rid of all the adjudication efforts. So  
18    like I said, our day in court was no longer going to  
19    be available with this. And it also had a deal as you  
20    read in the regs further about limiting wells that  
21    were within X amount of distance from the river, which  
22    is pretty much every well in the valley. So it was a  
23    -- it was a business killer. It was a -- it was not  
24    going to work.

25        Q.     You mentioned that your concern was that 4

1     acre-feet of water wouldn't be enough for pecans. Did  
2     you and the New Mexico Pecan Growers recognize that  
3     some crops use less than or the same amount as 4  
4     acre-feet?

5           A.     Yes. There was a broad brush attempt to  
6     average everybody the same, whether you had a low use  
7     crop that was using 2 or 3 acre-feet. It was -- it  
8     was unfair to try and categorize everybody the same.  
9     We're not disagreeing that there might be a 4  
10    acre-foot average in the valley, but averages are  
11    highs and lows, so it just threw everybody into the  
12    same -- same pot of soup basically.

13          Q.     Let's look at New Mexico Exhibit 689, and,  
14    again, this has been admitted already, Mr. Salopek,  
15    but do you recognize this document?

16                MS. KLAHN: Excuse me, Your Honor. I --  
17    I thought that these were cross exhibits, and I guess  
18    I just don't know the Court's policy if an exhibit is  
19    admitted for cross, is it fair game for direct, and so  
20    that's my question, I guess.

21                MR. WECHSLER: Your Honor, it's been  
22    admitted for all purposes. They're certainly on  
23    notice that this exhibit might come up with  
24    Mr. Salopek. I don't -- I don't understand Ms.  
25    Klahn's point.

1                   **MS. KLAHN:** I'm simply asking for a  
2 policy decision. I'm not --

3                   **JUDGE MELLOY:** You can use it. You can  
4 use the cross exhibits.

5                   **MS. KLAHN:** Thank you. So would it be  
6 the same the other way? So if there's a direct  
7 exhibit that's been admitted and we don't identify it  
8 on cross, we're okay to use it, correct?

9                   **JUDGE MELLOY:** Yes.

10                  **MS. KLAHN:** Okay. Thank you.

11                  **Q. (BY MR. WECHSLER)** Mr. Salopek, did you finish  
12 your answer? I had asked you if you recognized this  
13 document.

14                  **A.** Yes. I remember seeing it.

15                  **Q.** Was this a response from State Engineer John  
16 D'Antonio to your concerns?

17                  **A.** It addressed our letter. It didn't address  
18 our concerns.

19                  **Q.** Fair enough. Following this document, did  
20 you enter into a dialogue with the State of New Mexico  
21 over the needs of pecans in the Lower Rio Grande?

22                  **A.** Well, we did a few things. Obviously we had  
23 sent a letter to the state engineer, and this was the  
24 response that we got, which was unsatisfactory. So we  
25 reached out to our legislators. We reached out to the

1 governor of New Mexico, and we had many meetings and  
2 actually ended up having a meeting with the governor  
3 of New Mexico over the AWRM regulations.

4 **Q. Did you ultimately engage in a series of**  
5 **negotiations with the state engineer over the**  
6 **appropriate water use for pecans in the Lower Rio**  
7 **Grande?**

8 A. Yes, we did. We -- we negotiated heavily  
9 starting in January presenting loads of information.  
10 We had hired an attorney. We had a hydrologist, and  
11 we -- we spent months in many, many, many meetings  
12 presenting evidence showing the historic beneficial  
13 use of our growing pecans in the Lower Rio Grande.

14 **Q. Did those negotiations result in an**  
15 **agreement?**

16 A. Yes, it did.

17 **Q. Is that what's become known as the pecan**  
18 **settlement?**

19 A. Yes, it is.

20 **Q. Was the pecan settlement agreement signed by**  
21 **individual pecan farmers?**

22 A. Yes, it was.

23 **Q. Do you know how many?**

24 A. I -- I want to remember, it was close to 300.

25 **Q. Do you know how many acres they represented?**

1           A.     If I remember correctly, it was 25,000 plus.

2           Q.     What happened to the pecan settlement  
3 agreement?

4           A.     It was entered into the adjudication court  
5 with Judge Valentine.

6           Q.     Let's take a look at New Mexico -- I'm sorry  
7 -- Joint Exhibit 474. Do you recognize this document  
8 as the final judgment in what's become known as Stream  
9 System Issue 101 in the New Mexico adjudication court?

10          A.     Yes.

11          Q.     If we call out that first paragraph,  
12 Mr. Salopek, this reflects that the pecan settlement  
13 was filed in the adjudication court, and that's what  
14 you just testified to; is that right?

15          A.     That is correct.

16          Q.     Let's turn to Page 8 -- I'm sorry -- Page 3,  
17 Paragraph 8. After the pecan settlement agreement was  
18 entered, did the adjudication court open a proceeding  
19 to determine the consumptive use and farm delivery  
20 requirements for all of the acreage in crops in the  
21 LRG and New Mexico?

22          A.     That's what I remember, yes, and that's what  
23 it says right there.

24          Q.     Did the New Mexico Pecan Growers participate  
25 in the litigation and trial in that case?



1           A.     Yes, we did.

2           **Q.     Were you scheduled to be a witness in the**  
3 **proceeding?**

4           A.     I was.

5           **Q.     What happened during the trial?**

6           A.     What I remember is we had trial for  
7 approximately a week. Evidence was being put on. The  
8 judge had to stop at the end of the week. He had some  
9 previous obligations, so we did not continue with  
10 trial the following week. All parties were motivated  
11 to continue talking, so we met with the diversified  
12 growers, the pecan farmers, the state engineer, and  
13 EBID met the following week, and we were actually able  
14 to come up with a settlement agreement that next week.

15          **Q.     During the middle of litigation, you actually**  
16 **resolved the issue?**

17          A.     Yes, we did.

18          **Q.     Let's turn to Page 11 of this final order,**  
19 **and we see in Exhibit A, which is attached to the**  
20 **final order, then go to Page 12, and just call out the**  
21 **top part so we can see what this is. Is this the**  
22 **settlement agreement that was reached during the**  
23 **middle of litigation?**

24          A.     I believe it is.

25          **Q.     And to be clear, this is different than what**

1 has become known as the pecan settlement; is that  
2 right?

3 A. Yes, it is.

4 Q. If we turn to Page 20 of this document, is  
5 that your signature?

6 A. Yes, it is.

7 Q. Now, John Longworth will testify about this  
8 particular order and how it's used in New Mexico  
9 administration, but I want to ask you about your  
10 understanding of the agreement as a farmer who's  
11 regulated by the state engineer. So let's start with  
12 Page 12 of this document, which is Section 2, and do  
13 you understand that the order established limits as to  
14 how much water could be used on each acre of land in  
15 New Mexico?

16 A. Yes. I'm aware of that.

17 Q. Are you familiar with the term conjunctive  
18 use?

19 A. Yes, I am.

20 Q. What do you understand that term to mean?

21 A. Well, conjunctive use is the use of surface  
22 water and groundwater. It's a practice that's been  
23 going on in our valley for over 70 years.

24 Q. If we turn to Page -- and was it your  
25 understanding that this agreement codified that

1 conjunctive use?

2 A. It certainly recognized it and put it to  
3 print.

4 Q. If we turn to Page 16, and this time we're  
5 going to be looking at Section 6I, so if we call out  
6 "I" there. Here, it indicates that EBID members shall  
7 take full delivery of their surface water. How has  
8 that work in practice?

9 A. Obviously you're paying for it and want to  
10 use it, and when it's available, you have to use your  
11 water if you're going to use whatever you think you  
12 need to grow your crops with because on the EBID deal,  
13 either use it or lose it. It still goes against your  
14 FDR whether you use it or not?

15 Q. Still counts against you?

16 A. Yes, it does.

17 Q. Let's turn to Page 15 spilling into Page 16,  
18 which is Section 6H, little H, of this agreement.  
19 Give you a second while we call that out for you,  
20 Mr. Salopek. There we go. This discusses water  
21 administration. Does the New Mexico Pecan Growers and  
22 you understand this order could be used as part of  
23 priority administration, if necessary?

24 A. Yes, we do.

25 Q. Let's take a look at Page 15, Section 6A.

1 Did the New Mexico Pecan Growers understand they would  
2 be limited to water that had previously been put to  
3 beneficial use?

4 A. Yes.

5 Q. And what's your understanding of that?

6 A. Historic beneficial use is what was used to  
7 grow our crops, whether it was pecans, alfalfa, if you  
8 were double cropping, triple cropping. It's your  
9 historic use with -- of water.

10 Q. And you mentioned the historic practice over  
11 60, 70 years. Is it that amount of water that had  
12 been actually put to use over that period?

13 A. Yes.

14 Q. Let's turn to Page 13, Section 4 of Exhibit

15 A. This section of the agreement allows for  
16 establishment of water in excess of 4.5 acre-feet per  
17 year. Was that something that the New Mexico Pecan  
18 Growers negotiated for?

19 A. Yes. It was a compromise that we all agreed  
20 upon, all the farmer groups, including EBID, that if  
21 you were farming and you were comfortable, that you  
22 could make it on 4-and-a-half. You did not have to  
23 present any evidence to the state, to the Office of  
24 the State Engineer, but if you had practices and  
25 historic use of using more than 4-and-a-half of your

1 beneficial use, you could prove up to 5.5. If you're  
2 using more than 5.5, you would not be able to prove  
3 above that, and if you were not quite using 5.5, maybe  
4 it was 5.2, that's the limit you could prove up to is  
5 whatever you could show evidence of your beneficial  
6 use.

7 **Q. Gave you the opportunity to present evidence?**

8 A. That is correct.

9 **Q. Look at Page 13, Section 3 of Exhibit A.**

10 **This is one last feature of this that I want to call**  
11 **to your attention. We can see here a reference to**  
12 **groundwater being stacked. Do you see that? I'm**  
13 **looking at the last sentence. Are you familiar with**  
14 **the term stacking groundwater?**

15 A. I am.

16 **Q. What does that mean?**

17 A. I'll give a little example. Say you have  
18 Farm A and Farm B, and farm A has 3 acre-feet, Farm B  
19 has 3 acre-feet. You may stack the water from Farm A  
20 onto Farm B. That's 6 acre-feet, but no more water  
21 can be put on Farm A so it's a net gain, net zero  
22 situation.

23 **Q. It's allowing you to use your water rights**  
24 **where it's needed?**

25 A. That is correct.

1           Q.    But there's no additional water use, no  
2   increase of the water use?

3           A.    There's no increased depletions.

4           Q.    We talked about the OWMAN program earlier.  
5   Mr. Serrano will testify to that, but from your  
6   perspective as a farmer, is the OWMAN program helpful?

7           A.    It's very helpful.

8           Q.    Why?

9           A.    It allows you to utilize water efficiently.  
10   It allows you to put the water where it's needed, and  
11   you -- you've proven up the amount that you need to.  
12   Some farms may have a 4-and-a-half, some may have a  
13   5-and-a-half, and it allows you to prove up the -- to  
14   use your water effectively through the deal. In my  
15   case, I have some farms, and that's really what I know  
16   the most, is it is easier to get access to surface  
17   water. So I will use more of my surface water on  
18   those farms, and I will use groundwater on my other  
19   farms that have a hard time getting surface water.  
20   It's -- all it is is an average of all your properties  
21   you own.

22          Q.    We were looking here at the settlement  
23   agreement in Stream System Issue 101. Did Judge  
24   Valentine, the adjudication judge, hear testimony  
25   about the irrigation requirements of all crops?

1           A.     Yes, he did.

2           Q.     He heard testimony about this settlement  
3 agreement?

4           A.     Yes, he did.

5           Q.     Was there an expert that presented testimony?

6           A.     Yes, there was.

7           Q.     Do you know who that was?

8           A.     That was Dr. Phil King.

9           Q.     Did that result in this final judgment?

10          A.     Yes, it did.

11          Q.     So turning away from Stream System Issue 101,  
12 have -- has the New Mexico Pecan Growers continued to  
13 be involved in water-related issues in the lower Rio  
14 Grande?

15          A.     Yes, we have.

16          Q.     Can you describe some of the issues you've  
17 been involved in?

18          A.     Well, obviously Stream System Issue 101, and  
19 we've been continuing to work with the state on our  
20 metering order. When 1903 surface water was being  
21 developed, we actually worked with Lee Leininger with  
22 the U.S. on that one to help prove our 1903 date. We  
23 -- they have a fallowing program that the state has  
24 been implementing, and we have participated in that.  
25 There is a large working group called the Lower Rio

1 Grande Users Association. I'm terrible with acronyms  
2 so -- anyway, and that is all the big stakeholders in  
3 the lower Rio Grande, City of Las Cruces, NMSU, and  
4 farmers, and that is to try and come up with a plan in  
5 the event that we have extreme drought so we're not  
6 all fighting over priority administration. We're  
7 trying to come up with the rules of engagement, so we  
8 can all survive it instead of just going to court.  
9 And then obviously we're participating in Texas v. New  
10 Mexico.

11 Q. Let's turn to the impacts of the 2008  
12 operating agreement. Are you aware of that agreement  
13 between EBID, EP1, and Reclamation?

14 A. Yes, I am now.

15 Q. Prior to the finalization of the 2008  
16 operating agreement, did EBID hold any meetings with  
17 its members to discuss the terms of that agreement?

18 A. No, they didn't.

19 Q. Did EBID farmers have an opportunity to vote  
20 or approve of the operating agreement?

21 A. No, not that I remember.

22 Q. After the agreement was entered, did EBID  
23 hold any meetings to explain its terms to its members?

24 A. Yes, it did.

25 Q. Did you attend any of those meetings?



1           A.     I did.

2           **Q.     What was your understanding of the operating**  
3 **agreement?**

4           A.     It sounded like there were some positive  
5 things and some negative things.

6           **Q.     Please explain.**

7           A.     On the positive realm of the world, we were  
8 told that we were going to be able to pump without any  
9 impediment from the U.S. or EP1, and we were also told  
10 that it was going to stop all litigation. There was  
11 never going to be any interstate stream litigation  
12 again after this agreement was signed. Those are the  
13 two positive things that came out of this.

14          **Q.     What were the negatives?**

15          A.     The negative was the fact that carryover  
16 storage became part of the project, carryover storage  
17 for one district away from the other district.

18          **Q.     Why was that a problem?**

19          A.     Well, we had been practicing splitting the  
20 carryover storage at the end of every season for 90  
21 years, then all of a sudden, that changed, and it's --  
22 for years and years and years, EBID had beat the drum  
23 that they would never agree to carryover storage, and  
24 then all of a sudden, it's in there. So to this day,  
25 I'm still shocked and surprised because we paid for 50

1 -- 57 percent of that dam.

2 **Q. Does the New Mexico Pecan Growers Board**  
3 **review and approve all written materials before**  
4 **they're filed in this matter?**

5 A. Yes, we do.

6 **Q. Why has the New Mexico Pecan Growers actively**  
7 **participated as an amici?**

8 A. Once the Texas v. New Mexico lawsuit was  
9 filed and we read it and we saw that they wanted to go  
10 back to a 1938 Condition, we realized that that was  
11 going to be devastating to our industry if -- if they  
12 got their wish.

13 **Q. Would it be possible for you to farm like you**  
14 **did -- you would have in 1938?**

15 A. No, it would not. I mean, when I really  
16 think about 1938, and we're going to get rid of 80  
17 years' worth of infrastructure, all the municipalities  
18 will have to cap their wells, stop the El Paso from  
19 using surface water, all our groundwater for all the  
20 farms in the district go away, get rid of cement  
21 ditches, unlevel our fields, I mean, where does it  
22 stop? I just -- it doesn't make any sense.

23 **Q. What is the New Mexico Pecan Growers'**  
24 **position on the 2008 Operating Agreement?**

25 A. We feel like it -- we've been harmed by it.

1 Once the -- now that we've lived with it for many  
2 years, since '08, before their -- all the losses in  
3 drought, times of drought, were split amongst the  
4 districts. Now that we are guaranteeing all the  
5 losses, it doesn't matter where the losses come from  
6 as they go down the river. The New Mexico farmers are  
7 taking all the losses. So any city pumping, lack of  
8 maintenance of the stream system, you know, the  
9 riverbeds, everything is coming off of our backs now,  
10 domestic wells. It doesn't matter. The huge well  
11 field that they put on the -- the New Mexico/Mexico  
12 border, ultimately we're going to pay for all those  
13 losses, too, the way this is.

14 **Q. Is there an inequity in the amount that the**  
15 **water costs now?**

16 A. Very much so.

17 **Q. Please explain.**

18 A. This last year, we spent \$90 for 4 inches of  
19 water, and we -- that comes out when you divide it out  
20 to \$270 an acre-foot. Our sister district, EP1, they  
21 got 2 acre-feet of water this year, and their district  
22 fees were \$25. So it's 12.50 for an acre-foot versus  
23 270. That just doesn't feel like a partnership or  
24 fair anymore. The -- the other thing that is  
25 happening is we're making up all the difference in our

1     irrigation needs with well water, which is expensive.

2           **Q.**     Has there been an impact on the amount of  
3     your highest priority or I should say earliest  
4     priority water right, the surface water right?

5           **A.**     Well, when you really think about it, the  
6     1903 water that we have is our most valuable water  
7     because it's the last one that could get called, and  
8     that's the one we're getting the least of now, so I  
9     would say yes.

10          **Q.**     If New Mexico Pecan Grower members were no  
11     longer able to use groundwater, how would it impact  
12     their operations?

13          **A.**     We would be out of business in less than a  
14     year.

15                   **MR. WECHSLER:**   Thank you, Mr. Salopek.  
16                   No further questions, Your Honor.

17                   **JUDGE MELLOY:**   All right.   Who's going  
18     to go first?  Ms. Klahn?  Well, let me ask this:  
19     Mr. Wallace, do you have any questions?

20                   **MR. WALLACE:**   No questions, Your Honor.

21                   **JUDGE MELLOY:**   Okay.  Mr. Leininger, are  
22     you going to go first?

23                   **MR. LEININGER:**   I'm going to go first,  
24     Your Honor, yes.  Thank you.

25                   **JUDGE MELLOY:**   You may proceed.

## CROSS-EXAMINATION

BY MR. LEININGER:

Q. Good morning, Mr. Salopek.

A. Good morning.

Q. Lee Leininger for the U.S. Department of Justice. Let's start with your -- what was presented as New Mexico 990 exhibits. This is your graph that Mr. Wechsler was asking you about.

A. Okay.

Q. And you gave some testimony with regard to the various farms that you own and then the amount of water available and then the amount of water used and remaining water. You talked about your main farm up there.

A. Yes.

Q. And if we look over to remaining water in acre-feet from the OSE, that is remaining, and I believe you testified this is the end-of-the-year figures --

A. That is correct.

Q. -- as .064. So that is what your conjunctive use ability to pump consistent with that judgment, that 101 judgment?

A. It is.

Q. Okay. And if we look down at the bottom, you

1 have a number of farms in Hatch.

2 A. That is correct.

3 Q. And if we look over at the remaining water  
4 there, it shows amounts above 4, above 4.8, above 2.  
5 And I have a question with regard to the OWMAN  
6 process. That's the OSE, the Office of the State  
7 Engineer process for transfer of district water. Were  
8 -- were these -- were these wells and properties  
9 involved in the OWMAN transfer process?

10 A. They are.

11 Q. Okay. So the water at these wells in Hatch,  
12 which remained unused, was that transferred so that it  
13 could be used in your main farms?

14 A. No, sir.

15 Q. So --

16 A. It wasn't physically transferred. I mean, it  
17 was just part of the average here. You're talking  
18 about the surface water transfer? What are you  
19 talking about?

20 Q. No, I'm talking about your conjunctive  
21 ability to use water, surface water and groundwater.  
22 The reasons that there are remaining water in your  
23 Hatch farms, was that water involved in the OWMAN  
24 transfer process, which I understand is not a physical  
25 transfer of water, it's the ability to transfer across

1 the districts for use of water elsewhere. So --

2 A. They're part of my overall OWMAN process,  
3 yes.

4 Q. Okay. So these -- these farms in Hatch,  
5 which -- which had remaining water, were used in the  
6 OWMAN process and then transferred to use in your main  
7 farms?

8 A. They weren't transferred for use. It was  
9 just an average of use.

10 Q. Okay. So you're -- you're reducing your use  
11 of water in Hatch such that you can pump more water in  
12 your main farms up to an average, which remains -- I  
13 think you pointed this out, remains about 4.5; is that  
14 a fair assessment?

15 A. That's -- that is the -- the fair assessment  
16 is my average of 4.5.

17 Q. Okay. And your main farm, that's located  
18 within a mile of the river within the Mesilla Valley?

19 A. Yeah. I would say so. I have many deep  
20 wells on my main farm. A lot of them are over 600  
21 feet deep.

22 Q. That's the next question I have for you. We  
23 testified about the number of wells you have, 32  
24 wells, I believe.

25 A. Yes.

1           Q.    And you said a number of these went in, I  
2   think your grandfather put in '49, '50, 1949 to '50,  
3   something like that. Were those wells, the early  
4   wells, were they in the shallow aquifer?

5           A.    The wells that are still functioning from  
6   that early date, one is 120 feet, the other one is 350  
7   feet, the other one I'm not using anymore. I think it  
8   was 87 feet, if I remember right. I mean, these are  
9   close.

10          Q.    And then -- then we saw a permit -- you had  
11   shown a permit I think as one of your demonstratives.  
12   That was for a well in 1992, and that identified  
13   source of water in 1992 as the shallow aquifer for  
14   that well, correct?

15          A.    I'd have to go back and look at the permit.  
16   Is that the combine and commingle you're talking  
17   about?

18          Q.    It's the application for permit that you were  
19   discussing.

20          A.    If it was a combine and commingle, it didn't  
21   really talk about depths of wells. It was just  
22   talking about the wells together.

23          Q.    Let's -- let's go back to your demonstrative  
24   for that permit.

25                   JUDGE MELLOY: Can I interrupt for just



1 a second here? Just -- I know we talked about this,  
2 but can I make sure we're all on the same page? What  
3 does the witness understand a shallow well to be  
4 versus a deep -- how deep -- how deep is shallow, and  
5 how deep is deep, and is there an intermediate? I'm  
6 asking the witness. When you're using the term  
7 shallow, what do you mean? How deep is shallow?

8 THE WITNESS: I would say a shallow well  
9 would be 120 feet or less. I would say a medium depth  
10 well would be to 250 feet. And this is just my -- my  
11 terminology. Anything deeper than 250 would start  
12 being in the realm of a deep well.

13 JUDGE MELLODY: Okay.

14 Q. (BY MR. LEININGER) So this is the --  
15 Mr. Salopek, can you see this? It's the application  
16 for permit that was discussed by your counsel.

17 A. Uh-huh.

18 Q. And if we just blow up the top half of that,  
19 we'll see that this is drilled in 1992, or the  
20 application at least was --

21 A. It wasn't drilled. That was the date we  
22 applied for the permit of combine and commingle. All  
23 these wells were existing.

24 Q. I see. And so this confirms that these are  
25 wells in the shallow that's called the shallow water

1     **supply?**

2           A.     Not necessarily. I think that was put on  
3     there. I don't know that that is accurate because  
4     several of those wells listed here are much deeper  
5     than shallow.

6           Q.     So you don't know if this application for  
7     permit is accurate?

8           A.     I'm saying it's accurate that we combine and  
9     commingle. I think the word shallow -- I mean, you  
10    tell me what shallow means. I mean, honestly.

11          Q.     You just identified what your definition of  
12    shallow is, and I'm just asking you to confirm --

13          A.     Right. So if we use my definition, several  
14    of those wells are much deeper than shallow.

15          Q.     All right. But this particular application  
16    for a permit shows the source of water supply, and it  
17    identifies shallow water aquifer. So this -- this  
18    application at least accesses the shallow aquifer in  
19    19 -- at this time, correct?

20          A.     I would say some of the wells are in the  
21    shallow aquifer, yes.

22          Q.     Okay. So you also testified --

23                   MR. LEININGER: We can drop this. Thank  
24    you.

25          Q.     (BY MR. LEININGER) So you also testified that

1 you had drilled a new well last year, and you defined  
2 it as a deep well. I think I looked at that permit,  
3 and that deep well was over 600 feet, right?

4 A. It was 790 feet.

5 Q. So you drilling below the shallow aquifer and  
6 that well is being completed in the Santa Fe  
7 formation, the deeper aquifer?

8 A. It might even be beyond that. I had 350 feet  
9 of blank on it, and then I put 340 feet of screen  
10 below that.

11 Q. So why are you drilling --

12 A. I put 450. It's 790 feet so whatever -- I  
13 know there's 350 of blank, and the difference is  
14 screen.

15 Q. All right. So why did you drill a well  
16 almost 800 feet deep last year?

17 A. Water quality.

18 Q. And water quantity?

19 A. Same as my other wells. Right around about  
20 2,500 to 3,000 gallons a minute.

21 Q. Why didn't -- so are you saying that you  
22 could drill shallow wells, also, and receive the same  
23 amount of water production?

24 A. Yes. It'd just be different quality.

25 Q. Let's go to New Mexico 470 exhibit, and this

1 has already been presented by your counsel.

2 A. Okay.

3 Q. And you recognize this letter, right? This  
4 is your letter from you to the New Mexico Pecan Grower  
5 members, and it's dated November 23rd, 2006. Let's  
6 blow up that first paragraph. So from this first  
7 paragraph, you've already testified a little bit about  
8 this, but you were raising concerns to the pecan  
9 grower members about the proposed rules and  
10 regulations for Active Water Resource Administration  
11 of the lower Rio Grande, correct?

12 A. That is correct.

13 Q. And this has been the -- and I may -- I may  
14 slip and call it the AWRMs, also, because --

15 A. I'll know what you're talking about.

16 Q. You'll know what I'm talking about. Great.  
17 So the AWRMs were drafted by the New Mexico Office of  
18 the State Engineer, correct?

19 A. Uh-huh.

20 Q. And if we look at one line in here, you  
21 identified the, "AWRMs as regulations that result in  
22 actions that will ensure delivery of allocated water  
23 to Texas as mandated under the Rio Grande Compact and  
24 the Rio Grande Project." Did I read that correctly?

25 A. That's what it says, yes.

1           Q.    Was that your interpretation of what the AWRM  
2 was to accomplish?

3           A.    Say that again.

4           Q.    Was that -- this is your letter. Is that  
5 your interpretation of what the AWRM was to  
6 accomplish?

7           A.    I don't believe those are my words. I think  
8 those are words that came off the AWRM regulations.

9           Q.    Okay. So you are just referring to the AWRM  
10 regulations here for purposes of informing your pecan  
11 growers members, right?

12          A.    That's what -- if I remember right, that's  
13 what's in the regulations, and all we did was recite  
14 their words.

15          Q.    And we'll have more testimony on the AWRM  
16 from the Officer of the State Engineer witnesses,  
17 including the state engineer, but let's look at what  
18 is on the next page, the elements of -- I'm sorry --  
19 the first page, first numbered paragraph, and I  
20 believe you introduced this right above as, "Elements  
21 of importance," and you testified a little bit about  
22 this. Your concern was the AW RMs had a limit on  
23 combined surface and groundwater use of 4 acre-feet,  
24 and that's 4 acre-feet per acre, right?

25          A.    Yes.

1           Q.    Okay.  So the purpose of this letter was to  
2   protest the OSE's limit of 4 acre-feet per ag -- sorry  
3   -- irrigated agriculture in the lower Rio Grande,  
4   correct?

5           A.    The purpose of this letter is we really  
6   wanted our day in court so we could be adjudicated to  
7   our lawful right of beneficial use.

8           Q.    All right.  Let's go to the next exhibit,  
9   which is New Mexico 689.  And this was also presented  
10  earlier by Mr. Wechsler.

11          A.    I'm still looking at 3470.

12          Q.    So am I.  I've just been informed that our  
13  Trial Director is loading so hang on one second,  
14  please.  Oh, there we go.  Do you see Exhibit 689 now?

15          A.    I do now.

16          Q.    Okay.  So this is a letter you testified to.  
17  It's from the State Engineer John D'Antonio to you in  
18  response to your November 23rd letter, right?

19          A.    That is correct.

20          Q.    Okay.  Let's go to PDF 3 here.

21                   MR. LEININGER:  Your Honor, these --  
22  these pages, it's four pages in this exhibit, and it  
23  appears that they were out of order, so Page 3 of the  
24  exhibit here at the bottom appears to be the second  
25  page of the letter, and then the second page of the

1 exhibit, which we'll get to, is an attachment.

2 Q. (BY MR. LEININGER) So let's look at the  
3 second page of the letter, and let's pop out the third  
4 full paragraph. Here, Mr. D'Antonio is describing the  
5 purpose of the proposed rules and regulations, and he  
6 states that the AWRM is to ensure that New Mexico can  
7 take full advantage of its water resources and ensure  
8 Texas and Mexico get their fair share of water,  
9 correct?

10 A. That's what it says.

11 Q. That's what you were referring to, you had  
12 looked at other parts of the AWRMs, and that is what  
13 had gone into your November 23rd letter?

14 A. No. What our concern was is this  
15 circumvented state law, and we were wanting our day in  
16 court to have state law. This completely went around  
17 state law. So we have proved beneficial use. We have  
18 old water. We wanted our senior water rights looked  
19 at and protected. This was just something that was  
20 born that went around state law so we didn't like it.

21 Q. Sure. Mr. Salopek, my question is: You had  
22 testified that in your letter to the pecan grower  
23 members that you were quoting from the AWRMs and the  
24 Office of the State Engineer that -- that those rules  
25 and regulations were the ensure that Texas and Mexico

1 get their water. Do you recall that from your letter?

2 A. I think that was the state engineer's goal.

3 Q. Okay. So this is just confirming that that  
4 is the state engineer's goal, would you agree?

5 A. It was his goal with AWRM, but it was  
6 circumventing state law.

7 Q. Okay. Let's go to PDF 2 of this document.  
8 And we'll go --

9 MR. LEININGER: This is the attachment,  
10 Your Honor, to the letter.

11 Q. (BY MR. LEININGER) Mr. D'Antonio addresses  
12 the number of complaints that you had in your letter,  
13 and if we look under No. 1, we see in the italics,  
14 that was one of the numbered parts of your November  
15 13th -- sorry -- November, 2006, letter, and then here  
16 is Mr. D'Antonio's response to it. And he states  
17 that, "I will limit" -- sorry. He states in the  
18 second sentence, "The limits on irrigation well  
19 pumping will be calculated based upon a farm delivery  
20 requirement of 4.0 -- 4 acre-feet per acre, which is  
21 the average amount of water required to grow a crop in  
22 the Lower Rio Grande and takes into account current  
23 cropping patterns. Similar average limits already  
24 apply to irrigated farmland in the Roswell Basin, 3.5  
25 acre-feet per acre, and the Carlsbad Basin, 3.7



1 acre-feet per acre, and lower limits apply to other  
2 basins in the state." Were you aware that other  
3 basins in the state have a lower delivery requirement  
4 than the Lower Rio Grande?

5 A. I'm not aware of those other basins. I'm  
6 only aware of what they're trying to do in our basin.

7 Q. Okay. So you're not aware that the other  
8 basins have lower than 4.0 acre-foot per acre farm  
9 delivery requirement?

10 A. I'm only focused on my basin.

11 Q. Let's look at Paragraph 2. I believe it's  
12 the -- Mr. D'Antonio's addressing your -- your same  
13 question here. Here, the state engineer states that  
14 the, "Pecan farmers have long obtained extra water for  
15 their crop by leasing additional EBID surface water,  
16 some of it deriving from fallow lands still assessed  
17 by EBID." That's a correct statement, isn't it?

18 A. What year?

19 Q. Are you unable to confirm or deny what the  
20 state engineer is saying here?

21 A. It wouldn't have worked this last year.  
22 There was no water, so you can't lease water from  
23 other areas.

24 Q. Okay.

25 A. Or other farmers.

1           Q.     But -- I'm sorry. But the state engineer  
2     states that, "Pecan farmers have long obtained extra  
3     water for their crop by leasing additional," so over  
4     the long term, do you agree with this statement?

5           A.     No, I don't.

6           Q.     You don't agree with this statement? Have  
7     you ever leased water from fallowed lands?

8           A.     No, I haven't.

9           Q.     Let's go to the next PDF. This is PDF 4.  
10    This is the second page of the attachment. If we look  
11    at what the state engineer says here in the second  
12    paragraph, he talks about a groundbreaking proposal by  
13    EBID that'll be the centerpiece for the alternative  
14    administration plan for the Lower Rio Grande. And he  
15    notes that the EBID proposal -- I think it's the third  
16    sentence. "The EBID proposal will achieve the purpose  
17    of assuring the delivery of Texas' and Mexico's fair  
18    share of the Rio Grande Project supply." And he  
19    "considers EBID's proposal, if fully developed and  
20    implemented, to be a strong basis for any alternative  
21    form of administration that could make priority  
22    administration largely unnecessary." And then he goes  
23    onto praise EBID for this initiative and instructed  
24    his staff to assist EBID and the Lower Rio Grande  
25    Water Users Organization to flesh out the alternative

1 administration plan built around EBID's proposal. But  
2 -- but you and the Pecan Growers Association rejected  
3 the state engineer's proposal, right?

4 A. In reference to the Active Water Resource  
5 Management, AWRM?

6 Q. Yes.

7 A. Yes.

8 Q. And you rejected a farm delivery requirement  
9 of 4.0 acre-feet, correct?

10 A. Farm delivery requirement of 4.0, yes.

11 Q. All right. The state engineer also responded  
12 to another one of your concerns. Let's go back to PDF  
13 2. And here, let's look at what's labeled as  
14 Paragraph 3 where you were concerned that the state  
15 engineer's AWRMs would temporarily suspend groundwater  
16 pumping within a high-impact area, and then the state  
17 engineer responds, and let's just highlight the second  
18 sentence here. And Mr. D'Antonio is warning that if  
19 the Active Water Resource Management plan was not  
20 adopted, that priority administration would be  
21 implemented in terms of shortage, but goes onto  
22 say, "Only if necessary to ensure that Reclamation is  
23 able to deliver Rio Grande Project water ordered by  
24 Texas and Mexico." So you see that highlighted  
25 section, right?

1           A.     I see that.

2           Q.     The Rio Grande -- my question to you is: The  
3     Rio Grande Basin is in a period of drought now, right,  
4     and the area has been since 2008, right?

5           A.     Some areas of the Project are in a worse  
6     drought than others.

7           Q.     Right. And the Project has been dealing with  
8     what Mr. D'Antonio terms here as times of shortage  
9     since 2008, except for a few full allocation years; is  
10    that correct?

11          A.     Restate your question. I didn't understand  
12    it.

13          Q.     Sure. The state engineer here refers to  
14    times of shortage, and since 2008, the Project has  
15    been dealing with times of shortage, right?

16          A.     Is that written in there? I don't see that.

17          Q.     I'm sorry. In the first highlighted part of  
18    that sentence says, "Priority administration would be  
19    implemented only in times of shortage."

20          A.     Okay. And they still have that tool,  
21    priority administration, yes.

22          Q.     And you would agree that since 2008, the  
23    Project pretty much has been in times of shortage?

24          A.     Not for both districts.

25          Q.     Right. So even while there's reduced supply

1 in reservoir storage, would you agree that under the  
2 2008 operating agreement, Reclamation is delivering  
3 Texas' allocation?

4 A. Texas appears to be getting several full  
5 allotments in the last 13 years.

6 Q. Texas is getting its allocation delivered by  
7 Reclamation, correct, under the 2008 operating  
8 agreement?

9 A. Some full allotments, yes.

10 Q. And -- and so if there was no 2008 operating  
11 agreement, the state engineer may need to administer  
12 in priority and suspend pumping to ensure delivery to  
13 Texas and Mexico; isn't that what Mr. D'Antonio is  
14 saying here?

15 MR. WECHSLER: Objection; foundation and  
16 speculation.

17 A. I'm not an attorney --

18 JUDGE MELLOY: Well, just a second.  
19 Just a second.

20 THE WITNESS: I'm sorry.

21 JUDGE MELLOY: He's talked about his  
22 understanding of how the Project operates from a  
23 farmer's perspective, so I'll let him answer from his  
24 perspective. And he did testify about this  
25 negotiation back and forth so -- so go ahead and

1 answer the question, if you can.

2 A. Could you restate your question?

3 Q. (BY MR. LEININGER) Certainly. If there was  
4 no 2008 Operating Agreement, the state engineer may  
5 need to administer in priority and suspend pumping to  
6 ensure delivery to Texas and Mexico; isn't that what  
7 Mr. D'Antonio is saying here? Is that your  
8 interpretation of his --

9 A. Yes. Priority administration, whether it's  
10 the operating agreement or not, is still available as  
11 a tool.

12 Q. Let's go to the next exhibit. This is New  
13 Mexico 600. I'm sorry. It just takes a moment to  
14 load. And I believe you had discussed this, but I  
15 don't know if this had been presented. This is a  
16 e-mail that I believe you had sent -- let's blow that  
17 up -- in January, so this is just a couple months  
18 after that letter exchanged with the state engineer,  
19 January 3rd, 2007, and the subject is the meeting with  
20 the governor, and here you're thanking David Hume.  
21 Who is David Hume, what was his -- what was his  
22 position in the governor's office?

23 A. He was an assistant to the governor.

24 Q. He was Governor Richardson's director of  
25 policy and strategic planning, right?

1           A.    If that's the full term. I know him as an  
2 assistant to the governor.

3           Q.    Okay. And you met with the governor to  
4 protest the Office of the State Engineer proposal to  
5 limit irrigation water to 4 acre-feet per acre?

6           A.    Yes. We explained to the governor the crisis  
7 that this was going to create for the pecan industry  
8 and destroy one of his largest agricultural industries  
9 in the state in that part of the area.

10          Q.    How many times did you or your counsel meet  
11 with the governor or his staff?

12          A.    Governor Richardson, we just had the one  
13 meeting, and Bill Hume was just making sure that we  
14 were able to meet with the state engineer so he  
15 afforded that opportunity for us so we could present  
16 our evidence to show the amount of water that pecan  
17 trees used.

18                   MR. LEININGER: Your Honor, I'll move  
19 for the admission of what's been labeled as New Mexico  
20 600.

21                   JUDGE MELLOY: Any objection?

22                   MR. WECHSLER: I think it's already in,  
23 Your Honor.

24                   JUDGE MELLOY: If it's not in --

25                   MR. LEININGER: Oh, I apologize.

1                   **JUDGE MELLOY:** If it's not already  
2 admitted, it's admitted. Go ahead.

3                   **MR. LEININGER:** Okay. Thank you. And I  
4 stand corrected. Thank you, Jeff.

5           **Q. (BY MR. LEININGER)** So let's go to New Mexico  
6 602. And I think if we go to the second page, we'll  
7 see that this is what you sent to New Mexico Pecan  
8 Growers?

9           **A.** That is correct.

10          **Q.** Okay. And I apologize. This didn't have the  
11 signed version, but you recognize this document,  
12 right?

13          **A.** Yes, I do.

14          **Q.** If we go back to the first page, so it's  
15 titled -- before we blow it up there, it's titled the,  
16 "NMPG Announces Settlement Agreement with the State  
17 Engineer." And if we go to the third full paragraph,  
18 it notes that a little over a year after the meeting  
19 with the governor's staff, this agreement with the OSE  
20 was reached. It gives the pecan growers 5.5 acre-feet  
21 of water, right?

22          **A.** No, sir. They didn't give us anything. We  
23 proved it.

24          **Q.** Okay. But it -- the agreement was that you  
25 will be adjudicated farm delivery requirement of 5.5



1     **acre-feet?**

2           A.     That was an average of what we can prove  
3     through all our data. We actually had some data that  
4     showed more.

5           Q.     All right. Let's go back to what you had  
6     presented, which was, I believe, Joint Exhibit 474,  
7     and this was the final judgment in the Lower Rio  
8     Grande adjudication. If we go back to Paragraph D,  
9     which you had identified, this talks a little bit  
10    about the conjunctive use. I'm just blowing up this  
11    paragraph. I'm sure we'll have a lot more testimony  
12    with other witnesses on Stream System Issue 101, but  
13    do you see that this references 3.024 acre-foot per  
14    acre?

15          A.     I see it, but I'm not exactly sure what  
16    context it's in.

17          Q.     Okay. So you don't know what 3.024, where  
18    that number comes from?

19          A.     That was the amount of water, if memory  
20    serves me right, that initially was with the district.

21          Q.     Right. That was the amount of calculated  
22    farm delivery requirement, and that was calculated  
23    back in the 1950s; is that your understanding?

24          A.     I don't know what year it was calculated.

25          Q.     All right. But you understand that to be

1 Reclamation's figure of the amount of water that was  
2 available under a full allocation to each acre-foot --  
3 to each acre, excuse me, in -- in the Project?

4 A. I am not confident that that's what it says.

5 Q. All right. Well, we'll move on from here  
6 then.

7 So this settlement resulted in 5.5 acre-feet,  
8 but if I recall from your demonstrative, you said that  
9 you use water in pecans from 4 to 6 acre-feet?

10 A. That is correct.

11 Q. So the -- the 6 exceeds the final -- final  
12 judgment limit to beneficial use of 5.5?

13 A. That would be on your sandier soil, so yes,  
14 it does.

15 Q. All right. And last question, the Active  
16 Water Resource Management regulations for the Lower  
17 Rio Grande, they were never passed, were they?

18 A. Say that again.

19 Q. The AWRMs, the regulations for the Lower Rio  
20 Grande, they were never passed?

21 A. I don't know exactly what the status of the  
22 AWRM regulations are. I know that they had gone  
23 through lots of court trials, et cetera, but the  
24 current status of it, I do not know.

25 Q. You don't know if they are, in fact, in force

1 and effect right now?

2 A. I don't.

3 MR. LEININGER: Very good. I have no  
4 further questions. Thank you.

5 JUDGE MELLOY: Ms. Klahn, do you have  
6 anything?

7 MS. KLAHN: I have a few questions, Your  
8 Honor. Thank you.

9 JUDGE MELLOY: Go ahead.

10 CROSS-EXAMINATION

11 BY MS. KLAHN:

12 Q. Good morning, Mr. Salopek. Sarah Klahn,  
13 again, for the State of Texas.

14 A. Good morning.

15 Q. I wanted to ask you about the comparison you  
16 made when you were talking with Mr. Wechsler about the  
17 combine and commingle permit, and you compared it to  
18 the owner management plan approach that's currently  
19 available in the Lower Rio Grande. Do you recall that  
20 testimony?

21 A. I do.

22 Q. And I think you testified that the combine  
23 and commingle recognizes historical use of more than  
24 one well and consolidates it; is that right?

25 A. Not really. The combine and commingle allows

1 you to use any well on that given property, especially  
2 when you buy your neighbor's farm. It allows you to  
3 use any well on any of those given acres. That's what  
4 the purpose of the combine and commingle is.

5 Q. And if you file for a permit for combine and  
6 commingle that goes to public notice, and there's a  
7 possibility for a protest, correct?

8 A. I believe that was filed. Not -- I don't  
9 know that every permit has to be filed with legal  
10 notice. I -- I do not remember. I just know we -- it  
11 could have been.

12 Q. And for the owner management plan, there is  
13 no public notice or opportunity to comment or protest  
14 the owner management plans, is there?

15 A. It is a process that you work out with the  
16 state engineer.

17 Q. Okay. And there's not even any -- as far as  
18 -- as far as you're aware, there's not even any  
19 central register where all of the owner management  
20 plans could be consulted if somebody wanted to go and  
21 look and say so --

22 A. I am not.

23 Q. -- where's the water coming from? Have you  
24 ever seen anything like that?

25 A. I'm not aware of any of that. That's not my

1 wheelhouse.

2 Q. Okay. I think you testified that when you  
3 stack -- well, first of all, let's talk about just  
4 that terminology, stacking. I'm not sure it's been  
5 defined in this case. As an EBID member, you're  
6 familiar with the EBID rules and regulations that  
7 allow you to stack irrigation water, aren't you?

8 A. I am aware that you can stack EBID water,  
9 yes.

10 Q. Okay. And when you stack water, you're  
11 basically moving it with EBID's permission or at least  
12 acknowledgment, you're moving that water -- surface  
13 water from one farm to another farm so you can stack  
14 that water to get more irrigation water in a second  
15 farm, right?

16 A. You could, yes. That's my understanding of  
17 it.

18 Q. And -- and for the EBID stacking, you're  
19 limited to stacking it -- stacking twice the -- the  
20 annual available water supply, right? So you couldn't  
21 -- you couldn't take three sets of -- three farms  
22 worth of irrigation surface water and stack it onto a  
23 farm, correct?

24 A. I don't know that. I -- I don't know the  
25 limits of the stacking. You might be able to stack

1 four farms on one. I don't know the limits of that.

2 Q. Okay. And you testified that if you stack,  
3 you're not increasing the beneficial use or  
4 consumptive use, I guess, of the water because you  
5 were using 3 acre-feet over here, and now, you're  
6 using 3 acre-feet over there, correct?

7 A. If you transfer 3 acre-feet from Farm A and  
8 put it on Farm B, and if Farm B had 3 acre-feet and  
9 you now have 6 acre-feet on Farm B, if they're the  
10 same acreage, it's a net sum gain, zero.

11 Q. But it would also have to be the same crop,  
12 right? Because, for example, cotton doesn't -- you  
13 don't irrigate cotton for as many months as you  
14 irrigate pecans. So if you took water that had been  
15 previously used on a cotton farm and stacked it onto a  
16 pecan farm, you would actually be increasing the  
17 length of time that you were irrigating with the water  
18 from cotton farm, right?

19 A. I don't know the answer to that. I'm not a  
20 cotton farmer.

21 Q. But you own some farms in Hatch, correct?

22 A. I have farms in Hatch, yes.

23 Q. And you don't actually cultivate those farms,  
24 correct?

25 A. I have them leased out to tenants.

1 Q. And you take the water off of those farms and  
2 move it down to your main farm in the Mesilla,  
3 correct?

4 A. No, ma'am. They still farm with the water  
5 that's up there.

6 Q. I thought Mr. --

7 A. Go ahead.

8 Q. I thought Mr. Leininger talked to you about  
9 moving your -- the fact that you had moved some of  
10 that water under an OWMAN from the Hatch farms down to  
11 --

12 A. I never said I moved it.

13 JUDGE MELLODY: Excuse me.

14 A. I said it was an average.

15 Q. (BY MS. KLAHN) So it's important that we not  
16 talk over each other because there's a court reporter  
17 that we can't see and she's writing all this stuff  
18 down, and the judge is about to tell us both to stop  
19 interrupting, so let's -- let's try that again.

20 My understanding -- and maybe I misunderstood,  
21 but my understanding of your testimony with  
22 Mr. Leininger was that some of the irrigation water  
23 that can be used on the Hatch farms has been  
24 administratively moved under the OWMAN program to the  
25 main farm; is that correct?

1           A.    No, ma'am, that's not correct.

2           **Q.    Okay.**

3           A.    It is an average.  So those farms are  
4 included in my average of water usage.

5           **Q.    Your personal average?**

6           A.    My average of all my farms that I own.

7           **Q.    But I'm trying to understand this from an**  
8 **administrative perspective.  When Mr. Serrano looks at**  
9 **your water usage --**

10          A.    All right.  I'll give you my explanation for  
11 it.  All right.  You have a thousand -- let's do a  
12 hundred acres because it's easy math, and you have 5.5  
13 acre-feet.  That's 550 acre-feet of water you may use  
14 on that hundred acres.  Okay.  So, now, you have 50  
15 acres where my farm is and 50 acres in Hatch.  They  
16 both have a 5.5 amount of water you can use, so that's  
17 550 acre-feet of water.  If you plant a crop up there  
18 on one farm that only uses 2 or 3 acre-feet, but you  
19 have a 5.5 average, the difference, you are entitled  
20 to use it on the other land.  It is not an increase of  
21 use of water.  It is a recognition of your beneficial  
22 use that you have done and used those practices for  
23 decades is what it is.  It is a recognition of the  
24 use.  It is an average on your farm, just like the  
25 AWRM 4 acre-feet number was an average of the whole



1 valley.

2 Q. I was trying to understand it from an  
3 administrative perspective.

4 A. I just explained it.

5 Q. And I under -- and I understand that you have  
6 that availability to essentially use some of the water  
7 from Hatch on your main farm so long as you don't  
8 exceed 5.5 acre-feet per acre on all your ground; is  
9 that right?

10 A. On everything that -- I have some farms that  
11 have a 4.5 FDR. I have some that are 5.5. I have  
12 some that aren't quite 5.5. It is an average of all  
13 of those together that you are able to use.

14 Q. Let's turn to Exhibit 990, I think.

15 MS. KLAHN: Could we have that put up,  
16 please?

17 Q. (BY MS. KLAHN) So this document has some  
18 highlighting under "remaining water balance." What's  
19 the purpose of the highlighting?

20 A. That way I can tell if I go over or under on  
21 any particular farm.

22 Q. And is this something that you maintain  
23 throughout the season or something that you completed  
24 at the end of the year?

25 A. We read our wells every month, so I do this

1 monthly.

2 Q. Okay. So this is your December, 2020,  
3 summary basically for the year?

4 A. It's a recap of the season.

5 Q. Now, on this -- for purposes of the  
6 discussions we're having in this case, which involve  
7 water administration, water regulation, how much water  
8 New Mexico should be using, et cetera, would you agree  
9 with me that for purposes of this case, it's the OSE  
10 columns that are the ones that matter? That's how  
11 you're regulated is under the OSE columns, right, that  
12 show --

13 A. The OSE column is the one I live and die by.

14 MS. KLAHN: Okay. You can take that  
15 down. Could we have New Mexico 989, please? I  
16 must've written that down wrong. I'm looking for the  
17 kilowatt hours one. What number was that? 984, I  
18 think. Thank you.

19 Q. (BY MS. KLAHN) So you testified that this --  
20 first of all, this is a plot of kilowatt hours,  
21 correct?

22 A. Yes, ma'am.

23 Q. It's not a plot of surface water?

24 A. No, ma'am.

25 Q. Okay. And you testified that by looking at

1     **this, you can tell how much surface water you had**  
2     **available. Do you recall that?**

3         A.     This is a different slide than the one we  
4     looked at earlier, because it's -- we're missing --  
5     okay. This is the main farm. Excuse me. Is this the  
6     one that was in the record? All right. Go ahead.

7         **Q.     I believe so.**

8         A.     All right.

9         **Q.     I believe this is the one that was admitted.**

10               **MS. KLAHN:** Could you pop it out again,  
11     Justin?

12         **Q.     (BY MS. KLAHN) I believe your testimony was**  
13     **that by looking at this, it's possible to infer how**  
14     **much surface water was available to you from looking**  
15     **at the amount of kilowatt hours; is that right?**

16         A.     You could extrapolate it out that there was  
17     more surface water on less kilowatt hours, yes.

18         **Q.     But would you agree with me that there was a**  
19     **full water supply from the late 1990s until about**  
20     **2002?**

21         A.     I don't know that we had a full water supply  
22     in 2002. I know we didn't in '03. If my memory  
23     serves me correctly, our water supply was less  
24     starting in '99 or 2000, but I do not have that data  
25     in front of me.

1           Q.    So if we actually put surface water  
2   availability under EBID up here against these kilowatt  
3   hours, you're actually not sure whether or not it  
4   would show that you pumped more in years with less  
5   surface water, correct?

6           A.    Say that again.

7           Q.    I said if we put the actual surface water  
8   availability that would -- was available to you under  
9   EBID up here against these kilowatt hours, you're not  
10   actually able to say, as you sit here, whether or not  
11   this actually reflects, for example, 2003 has 313,295  
12   kilowatt hours, but you just said you thought it was a  
13   full supply year. If that's the case, that's higher  
14   than everything that came before it.

15          A.    I don't remember if that was a full supply  
16   year or not. I would -- I would suggest that it  
17   wasn't because of those numbers.

18          Q.    So you -- but you haven't made that  
19   comparison for purposes of your testimony today,  
20   correct?

21          A.    I haven't. And, you know, quite frankly, if  
22   we had a partial un-full supply year that year, I may  
23   have transferred that water of EBID to another farm  
24   and used the water there, which showed a little bit  
25   higher usage on, say, 2002 or '3. Maybe they were

1 going to tell us we were going to run out of water in  
2 September so I was trying to use it somewhere else. I  
3 don't remember the details.

4 **MS. KLAHN:** I don't think I have  
5 anything further for this witness. Thank you.

6 **JUDGE MELLOY:** Mr. Wechsler, do you have  
7 anything for redirect?

8 **MR. WECHSLER:** I have a few questions,  
9 Your Honor. May I proceed?

10 **JUDGE MELLOY:** You may.

11 REDIRECT EXAMINATION

12 BY MR. WECHSLER:

13 **Q.** Mr. Salopek, I want to start with the combine  
14 and commingle permit. Do you recall discussing that  
15 with Mr. Leininger?

16 **A.** I do.

17 **Q.** And Mr. Leininger was suggesting something  
18 about the shallow aquifer. Do you know how the state  
19 engineer defined shallow aquifer for administrative  
20 purposes?

21 **A.** I don't.

22 **Q.** We talked about -- you talked about the  
23 letter from 2006 from the state engineer with  
24 Mr. Leininger. Do you recall that?

25 **A.** I do.

1           Q.    And between 2006 and the time that the Court  
2 heard evidence on the Stream System Issue 101 and then  
3 entered its final order, was there a significant  
4 amount of study and evidence presented by all parties  
5 on the water use in the Lower Rio Grande?

6           A.    Mr. Wechsler, could you restate the question?  
7 I -- I missed part of it. Sorry.

8           Q.    Yeah. I'm happy to. My point is: You were  
9 looking at a letter from 2006, right?

10          A.    Yes.

11          Q.    And then the Stream System Issue 101 was  
12 resolved in that final judgment many years later; is  
13 that right?

14          A.    It was -- well, 2011, so five years later.

15          Q.    During those five years, was there evidence  
16 presented, analysis done that evaluated the water use  
17 in the Lower Rio Grande?

18          A.    Yes. Enormous amount of time, money, and  
19 resources were put into that.

20          Q.    Do you know if the United States participated  
21 or at least was aware of Stream System Issue 101?

22          A.    They would have been notified about it, yes.

23          Q.    Was -- and you testified that Dr. King  
24 actually testified to the correct amount of water use  
25 during the proceeding; is that right?

1           A.     That is correct.

2           Q.     And then ultimately, that's what led Judge  
3     Valentine to enter the final judgment?

4           A.     Yes.

5           Q.     Did EBID accept -- I mean, you testified that  
6     the New Mexico Pecan Growers did not accept the limit  
7     of 4 acre-feet per acre that was initially proposed by  
8     the state engineer. Do you know if EBID accepted that  
9     amount of 4 acre-feet per acre?

10          A.     I believe they didn't. I know when there was  
11     the initial fight in the initial litigation, EBID was  
12     protesting that, as well as we were, so I would say  
13     no, they weren't -- they didn't like it.

14          Q.     During your discussion with Mr. Leininger,  
15     you indicated -- he asked you a question about if  
16     there's been a shortage for the districts in recent  
17     years, and you said, "Not for both districts." Do you  
18     recall that?

19          A.     Yes, I do.

20          Q.     What did you mean?

21          A.     Since the operating agreement, EP1 has had  
22     several full allotment years, and we have had none.

23          Q.     We'll actually get a chance to look at some  
24     of these documents, I think, later that -- that you  
25     presented, but in terms of the evidence that you

1 presented to the state engineer during your  
2 negotiations and ultimately the court, can you just  
3 give us an idea of what was presented? What was it  
4 that you were showing in order to establish that  
5 pecans had historically used a larger amount of water  
6 than 4 acre-feet per acre?

7 A. One of the -- the areas that we used was the  
8 -- the Sammis study, which was done on my farm. We  
9 did the Miyamoto study, which was done in the lower  
10 valley, which actually showed more water use than we  
11 had. We did several other studies. I think there  
12 were some in -- other ones at NMSU that had been  
13 previously done. I think there were some in Arizona  
14 that we might have used. It's been a while. There  
15 was a lot of studies and a lot of paperwork that had  
16 been done.

17 Q. And those --

18 A. We also used some of the personal records of  
19 farmers showing how much water they had put on the  
20 fields.

21 Q. And -- and those -- all of that evidence  
22 showed that pecans had used CIR of more than 48 inches  
23 or 48 inches?

24 A. It is a 48-inch or more, correct.

25 Q. And, finally, you were asked some questions



1 both by Mr. Leininger and by Ms. Klahn about OWMAN and  
2 how that worked and -- and sort of transferring water  
3 between farms. Let me just ask you: On the main  
4 farm, what's your limit for water use on the main farm  
5 for those acres?

6 A. An FDR of 5.5.

7 Q. And have you historically, going back those  
8 60/70 years you've been testifying to, has that farm  
9 always used that 5.5 acre-feet per acre?

10 A. I would assume so. We grew a lot of alfalfa  
11 on that farm over the years. As my father  
12 transitioned into pecans in 1955 going forward, there  
13 was a lot of alfalfa that he grew.

14 Q. Why do you reference alfalfa?

15 A. It is a high-water-use crop.

16 Q. Like pecans, it also uses a large amount of  
17 water?

18 A. That or more.

19 MR. WECHSLER: No further questions,  
20 Your Honor. Thank you.

21 JUDGE MELLOY: Anything further,  
22 Mr. Leininger or Ms. Klahn?

23 MR. LEININGER: No, Your Honor. Thank  
24 you.

25 JUDGE MELLOY: Ms. Klahn?

1                   **MS. KLAHN:** No, Your Honor.

2                   **JUDGE MELLOY:** All right. Then the  
3 witness is excused. We appreciate your testimony, and  
4 we'll take a break at this time until 1:25 our time,  
5 get your next witness lined up, and then we'll come  
6 back then. Thank you, everyone.

7                                   (Recess.)

8                   **JUDGE MELLOY:** All right. We're back on  
9 the record in connection with Original No. 141, Texas  
10 versus New Mexico. Let me ask the parties to enter  
11 their appearance for this afternoon session. I see we  
12 have some different folks so for Texas?

13                   **MR. DEITCHMAN:** Good afternoon, Your  
14 Honor. Rich Deitchman for the State of Texas.

15                   **JUDGE MELLOY:** Okay. And for New  
16 Mexico?

17                   **MS. DALRYMPLE:** Good afternoon, Your  
18 Honor. Shelly Dalrymple for the State of New Mexico.

19                   **JUDGE MELLOY:** Okay. And then for  
20 Colorado, Mr. Wallace, I see you're still with us?

21                   **MR. WALLACE:** Yes, Your Honor.

22                   **JUDGE MELLOY:** And then for United  
23 States?

24                   **MR. DUBOIS:** Good afternoon, Your Honor.  
25 James Dubois for the United States.

1                   **JUDGE MELLOY:** All right. And then --  
2 all right. New Mexico may call its next witness,  
3 Ms. Dalrymple.

4                   **MS. DALRYMPLE:** Thank you, Your Honor.  
5 We're just turning on the camera in the witness room.  
6 One second. New Mexico calls Mr. Gregg Carrasco.  
7 Good afternoon, Mr. Carrasco.

8                   **THE WITNESS:** Good afternoon.

9                   **JUDGE MELLOY:** Just a second. Just a  
10 second. Before we start, Mr. Carrasco, I need to  
11 swear you as a witness. Would you raise your right  
12 hand, please? Do you swear or affirm that the  
13 testimony you're about to give will be the truth, the  
14 whole truth, and nothing but the truth?

15                  **THE WITNESS:** I do.

16                  **JUDGE MELLOY:** All right. And I need to  
17 give you a couple admonitions we're going over with  
18 each of the witnesses. First, let me ask you: Is  
19 there anyone in the room with you?

20                  **THE WITNESS:** No, there's not.

21                  **JUDGE MELLOY:** Do you have available to  
22 you any papers or documents other than the exhibit  
23 book to which you would be referring to during your  
24 testimony?

25                  **THE WITNESS:** I do not.

1                   **JUDGE MELLOY:** And I need to advise you  
2 that you're not allowed to have any communication  
3 devices such as iPhones, iPads, laptops, et cetera,  
4 for texting, e-mail, or any other communication needs.  
5 Do you understand that?

6                   **THE WITNESS:** I do Your Honor.

7                   **JUDGE MELLOY:** All right. Thank you.  
8 And I should ask you, also, to, for the record, state  
9 and spell your name.

10                  **THE WITNESS:** My name is Gregory M.  
11 Carrasco, G-R-E-G-O-R-Y, M, C-A-R-R-A-S-C-O.

12                  **JUDGE MELLOY:** All right. You may  
13 proceed.

14                  **MR. DEITCHMAN:** Your Honor, sorry to  
15 interrupt. The state of Texas would like to assert a  
16 standing objection to this witness' testimony, and if  
17 I could state that for the record now.

18                  **JUDGE MELLOY:** You may.

19                  **MR. DEITCHMAN:** Your Honor, it is our  
20 position that this witness' testimony and the  
21 described scope in the State of New Mexico's  
22 anticipated order of witness, it's Docket 599 at Page  
23 3, this testimony is improper. The categories of  
24 testimony are listed as follows: Valuation of  
25 agriculture land uses and water rights, potential

1 impacts of fallowing and/or depletion reduction to  
2 farming and ancillary businesses, and the economic  
3 value of farming and ancillary businesses in Southern  
4 New Mexico. This witness was not disclosed as an  
5 expert, was not disclosed as a retained expert, was  
6 not disclosed as a nonretained expert. Each of those  
7 categories is the subject for expert testimony. In  
8 addition, the testimony goes to damages and remedies.  
9 New Mexico admits as much in saying that he'll testify  
10 about the potential impacts of fallowing and/or  
11 depletion reduction to farming and ancillary  
12 businesses, so Texas would renew our motion in limine  
13 No. 3, which was to exclude the introduction of  
14 evidence at trial relating to damages allegedly  
15 sustained by New Mexico. They never disclosed that  
16 witness for that purpose, an expert witness, and they  
17 certainly never disclosed Mr. Carrasco as an expert  
18 witness for that purpose.

19 Finally, Mr. Carrasco is not an  
20 economist. There's no basis for him to provide his  
21 opinion on economic impacts to the region, which they  
22 describe as all of Southern New Mexico. According to  
23 his resume, he's retired from Farm Credit. He may do  
24 some limited consulting work for them, but there's no  
25 basis for this witness to provide this testimony.

1 Thank you.

2 **MR. DUBOIS:** Your Honor, this is James  
3 Dubois. The United States also joins in that  
4 objection. I understand the testimony has not been  
5 offered yet. I expect that as we get to the specifics  
6 of the testimony, we will be -- we will be raising  
7 this objection again and giving you some additional  
8 authority for that.

9 **JUDGE MELLOY:** What is -- what's the  
10 position of -- of New Mexico on this issue?

11 **MS. DALRYMPLE:** Thank you, Your Honor.  
12 Your Honor, the New Mexico position is that the  
13 evidence to be presented by Mr. Carrasco is relevant  
14 because New Mexico and, in fact, Texas have made  
15 injunctive claims and claims for injunctive relief and  
16 whether that injunctive relief is appropriate is at  
17 issue. New Mexico needs to establish that it's  
18 entitled to injunctive relief. What's involved and  
19 what the testimony will go to is the balance of harms,  
20 injury, the public interest. It's important that the  
21 Court understand the importance of the agricultural  
22 industry to the issues at this case, to the community,  
23 to the state, and that the Court understand that the  
24 entire Lower Rio Grande area has been dependent upon  
25 groundwater pumping and has had certain understandings

1 about its regulatory use and its use in both New  
2 Mexico and Texas. That's our position on the  
3 relevance of his testimony that, in fact, this goes  
4 right to the heart of the injunctive relief being  
5 sought by both parties.

6 As to Mr. Carrasco's status as an  
7 expert, we are not proffering him as an expert. When  
8 I have an opportunity to present his qualifications as  
9 a fact witness, it will become very clear that under  
10 Rule 701, his testimony is based on -- is rationally  
11 based on his perceptions based on 35 years in the  
12 lending business, in the appraisal business, and in  
13 the farming business. It will help to clearly  
14 understand the issues at this case. He is not being  
15 proffered as an expert, and it will be clear as he is  
16 permitted to testify that it is based on his own  
17 rational experience -- experience and perceptions.

18 **JUDGE MELLOY:** Well --

19 **MR. DEITCHMAN:** Your Honor, may I  
20 provide one additional comment?

21 **JUDGE MELLOY:** You may.

22 **MR. DEITCHMAN:** First, Texas has not at  
23 this time objected to the relevance of the testimony.  
24 That remains to be seen. The objection here is that  
25 he has not been disclosed as an expert, and the time

1 for that is long passed. Second, as to the injunctive  
2 relief, I believe that's for the remedies phase, which  
3 is some time in the future.

4 **JUDGE MELLOY:** Well --

5 **MS. DALRYMPLE:** Your Honor, if I may --  
6 I'm sorry.

7 **JUDGE MELLOY:** Let me speak. I do  
8 believe that the United States has asked for an  
9 immediate injunction, and that was in the motion for  
10 summary judgment paper, so I'm not sure where we are,  
11 whether the United States is still asking for  
12 immediate injunctive relief, which they did ask for at  
13 one time, or whether they are willing to wait until  
14 the remedies phase for that. So I -- I do think that  
15 is -- that is an issue that's at least on the table.  
16 I'll let New Mexico have further word, but what you  
17 have said, Counsel, some of which you've indicated  
18 sounds an awful lot like expert testimony. In my  
19 experience, appraisal is -- appraisers are experts.  
20 They're not -- they're not fact witnesses. So if you  
21 want to say something further, that's fine, and I'll  
22 certainly let the witness testify, but there may be  
23 areas where I will sustain objections if -- if it does  
24 turn out to be expert testimony, and that's certainly  
25 an area where I think expert testimony may -- may, in



1 fact -- well, that may be a problem. So I'll just  
2 leave it at that.

3 **MS. DALRYMPLE:** Thank you, Your Honor.  
4 We understand, and I think it will become very clear  
5 that Mr. Carrasco is not offering expert testimony,  
6 but rather observations that will be helpful to Your  
7 Honor based on his years of experience in this  
8 industry and in the community. I understand that we  
9 may be subject to objections based on individual  
10 pieces of testimony that we can discuss when those  
11 arise, but I think if we can lay the foundation for  
12 Mr. Carrasco's testimony, it will be clear that he's  
13 not offering expert testimony.

14 **JUDGE MELLODY:** Go ahead.

15 **MS. DALRYMPLE:** Thank you.

16 GREGORY CARRASCO,  
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. DALRYMPLE:

20 **Q. Let's try this again, Mr. Carrasco. Good**  
21 **afternoon.**

22 **A. Good afternoon.**

23 **Q. Mr. Carrasco, what is your current**  
24 **professional position?**

25 **A. I retired from Farm Credit on the end of**

1 February. I've been retained as an independent  
2 consultant with them for the management of some  
3 specific assets and some special projects. I also  
4 provide some independent contracting services to some  
5 other ag businesses in the area.

6 **JUDGE MELLODY:** Excuse me. Mr. Carrasco,  
7 could you get a little -- maybe bring the microphone a  
8 little closer? I'm having a little trouble.

9 **Q. (BY MS. DALRYMPLE)** Greg, it looks like you  
10 turned it off. It's not red anymore. There, thank  
11 you.

12 **Mr. Carrasco, we'll talk about Farm Credit a**  
13 **little later. Where did you grow up, sir?**

14 **A.** I grew up in Las Lunas, which is small down  
15 in the middle Rio Grande just south of Albuquerque.

16 **Q. Did your family farm?**

17 **A.** We did. We had irrigated farms there, and we  
18 also ranched in the area.

19 **Q. And what does ranching mean?**

20 **A.** Cattle ranching on rangeland, non-irrigated  
21 land.

22 **Q. Thank you. I'm going to ask Ms. Ferguson to**  
23 **pull up New Mexico Demonstrative 25 and ask you to**  
24 **take a look at that. Mr. Carrasco, do you recognize**  
25 **this -- first of all, did it show up for you?**

1           A.    I have it in front of me, yes, I do.

2           **Q.    Okay.  What is this, sir?**

3           A.    This is a CV that I put together showing my  
4 education, employment history, and those things.

5           **Q.    Is it accurate?**

6           A.    It is.

7           **Q.    Let's use it to walk through a little of your**  
8 **background.  Can you tell us a little bit about your**  
9 **education, please?**

10          A.    Sure.  I attended New Mexico State University  
11 and graduated in 1980 with a double major in animal  
12 science and agricultural economics.

13          **Q.    I'm sorry.  I was just looking on the dates**  
14 **on there.  That got me a little confused.  Do you have**  
15 **any certifications or other accreditations?**

16          A.    I do.  I've been an accredited rural  
17 appraiser since 1985 by the American Society of Farm  
18 Managers and Rural Appraisers.  I'm also a state  
19 certified general appraiser under the State of New  
20 Mexico's licensing law since 1991.

21          **Q.    Okay.  Thank you.  And then you mentioned you**  
22 **have recently retired from Farm Credit.  When did you**  
23 **-- let's go backwards from your most recent position**  
24 **with Farm Credit.  When did you start with Farm**  
25 **Credit?**

1           A.     My most recent position was from 1999 to  
2     2021. For most of that time period, I was the branch  
3     manager for the Las Cruces area. The last couple of  
4     years, '19 to 2021, I was in a transitional position  
5     as we brought in a new branch manager. I was  
6     basically senior relationship officer working special  
7     projects across the state of New Mexico.

8           **Q.     Thank you. And before you went with Farm**  
9     **Credit in 1999, where did you work?**

10          A.     I owned two separate businesses. 1993, I  
11     bought Southwestern Abstract & Title Company. It was  
12     a title and abstract real estate closing services  
13     company here in Dona Ana County. Also at that same  
14     time, I invested in what was called IDEA Corporation.  
15     IDEA produced ruggedized computer communications  
16     platform that the Department of Defense used and some  
17     forward deployments and those two businesses, I ran  
18     for that time period.

19          **Q.     Okay. What did you do before you owned those**  
20     **two businesses, sir?**

21          A.     Upon graduation from college, I went to work  
22     for at that time what was called Federal Land Bank  
23     Association of Las Cruces. Through a series of  
24     consolidations and stuff, it eventually became what  
25     was Farm Credit Services of New Mexico. It was a \$90

1 million branch office that I managed. I began  
2 managing that office about 1984, about four years  
3 after I started. It was, you know, general duties  
4 were the management of the office, the extension of  
5 credit to agricultural operations in the area, and the  
6 appraisal of real estate and personal property to  
7 support those loans.

8 **Q. Mr. Carrasco, those duties that you just**  
9 **discussed for your earlier stint with Farm Credit, can**  
10 **you elaborate on those as to in your most recent**  
11 **22-year stint with Farm Credit, what your duties and**  
12 **responsibilities were?**

13 A. Yes. I basically managed an office that took  
14 in the southern part of the state. We made both real  
15 estate loans and operating loans to agricultural  
16 producers. The area that's within the lower Rio  
17 Grande basin is the primary lending area for that  
18 office. So in addition to general management,  
19 everything from human resource management to some  
20 financial management, my main job was underwriting and  
21 approval of loans, review of appraisals for  
22 agricultural operations there in that area.

23 **Q. Do you live in Las Cruces now, sir?**

24 A. I do.

25 **Q. Is that where Farm Credit is based, at least**

1     **the office you worked in?**

2         A.     It is, yes.

3                 **MS. DALRYMPLE:**   I'm going to move to  
4     admit New Mexico Demonstrative 25, please.

5                 **JUDGE MELLOY:**   Any objection?

6                 **MR. DEITCHMAN:**   No objection.

7                 **MR. DUBOIS:**   None from the United  
8     States.

9                 **JUDGE MELLOY:**   Exhibit 25 is admitted.

10                **MS. DALRYMPLE:**   Thank you.

11                **Q.     (BY MS. DALRYMPLE)   Going back to your CV,**  
12     **sir, you mentioned some other businesses and personal**  
13     **investments.  As I look at that, it looks like you own**  
14     **three areas of farmland; is that correct?**

15                A.     Those are three different companies.  Three  
16     Saints, LLC, these are all held by just myself and my  
17     wife, own some agricultural real estate there in the  
18     valley.  There's about 86 acres of irrigated farmland  
19     just south of Las Cruces.  The Slash 3C Ranch is a  
20     large desert ranch located west of Las Cruces out on  
21     the mesa, and Tierra de Dona Ana is a real estate  
22     holding company that owns some nonagricultural type  
23     properties.

24                **Q.     As to these farming properties and ranching**  
25     **properties in the lower Rio Grande, do you have water**

1     **rights?**

2           A.     As to the farms under -- owned by Three  
3     Saints, yes, they have both surface water rights  
4     through the Elephant Butte Irrigation District, and  
5     supplemental groundwater rights that we produce out of  
6     wells.

7           **Q.     Have your groundwater rights been**  
8     **adjudicated?**

9           A.     They have been.

10          **Q.     What's your adjudicated acre-feet number?**

11          A.     4.5 acre-feet as a farm delivery.

12          **Q.     Thank you. Do you have any groundwater wells**  
13     **on these properties?**

14          A.     We do. We have three wells, one of which is  
15     not operable.

16          **Q.     As to the other two, are they metered?**

17          A.     They are. They're metered. We were required  
18     to provide meter readings quarterly to the Office of  
19     State Engineer, so they can monitor the use of those  
20     wells.

21          **Q.     And I believe you mentioned that you are a**  
22     **member of EBID; is that correct?**

23          A.     I'm a member of EBID because I own property  
24     within Elephant Butte Irrigation District, and I, of  
25     course, pay my assistants.

1           **Q.    Are you allotted Rio Grande Project surface**  
2 **water?**

3           A.    I am through the Elephant Butte Irrigation  
4 District.

5           **Q.    And do you supplement your Rio Grande Project**  
6 **surface water with groundwater pumping on your farms**  
7 **as necessary?**

8           A.    Yes.   With 4 acre delivered this year, most  
9 of the water was pumped that we used to grow crops.

10          **Q.    Okay.   Looking back at your CV, I don't**  
11 **believe we have talked about your civic organize**  
12 **involvement.   Can you tell us a little bit about**  
13 **those?**

14          A.    Yes.   You know, like most of the people  
15 involved in this case, you know, civil involvement,  
16 giving back to the community, is important to all of  
17 us, but been involved with the Diocese of Las Cruces,  
18 New Mexico State University and its foundation,  
19 Southern New Mexico State Fair and Rodeo, New Mexico  
20 Cattle Growers, Southern New Mexico Diversified Crop  
21 Growers Association, and American Angus.

22          **Q.    So the Southern New Mexico Diversified Crop**  
23 **Growers Association, sometimes we shorthand that as**  
24 **Diversified Growers.   That is an amicus in this case;**  
25 **is that right?**



1           A.     That is my understanding, yes, ma'am.

2           Q.     Okay. And I think this is cut off a little  
3 bit.

4                   MS. DALRYMPLE: Ms. Ferguson, could you  
5 open that? No, it's not.

6           Q.     (BY MS. DALRYMPLE) Are you involved in any  
7 professional organizations? I don't think I've  
8 covered that.

9           A.     I am, largely through the appraisal side.  
10 I'm a member of the American Society of Farm  
11 Management and Rural Appraisers, and, of course, there  
12 is a state chapter. I was a member of their national  
13 educational committee back in the early '90s. After  
14 the appraisal standards board was brought in in  
15 response to the S&L failures, they were trying to put  
16 some educational information together across the State  
17 of New Mexico. Most of that information had been  
18 based on Midwest appraisal techniques, and they wanted  
19 somebody with some background in lending and doing  
20 appraisals within a Bureau of Reclamation and with  
21 some assured backgrounds such as BLM or forest service  
22 so was on that national committee for a while. I also  
23 served as a president for the New Mexico Chapter for a  
24 couple years here in New Mexico.

25           Q.     Thank you. What I was looking for a minute

1     ago, and I don't see it on here, is that you are also  
2     a member of -- you are a commissioner on the  
3     Interstate Stream Commission; is that correct, of New  
4     Mexico?

5         A.     I am. I was appointed in 2019.

6         Q.     Who appointed you, sir?

7         A.     The current governor.

8         Q.     I want to make it perfectly clear that you're  
9     not here to testify as an ISC commissioner. Can you  
10    agree with that?

11        A.     I do.

12        Q.     Do you know how it -- how the governor came  
13    to appoint you? Do you have any insight into why she  
14    appointed you or put your name forward as a  
15    commissioner?

16        A.     I don't know exactly. I'm assuming the name  
17    was proposed by some of the agricultural groups down  
18    in that area. Jeff Witte, who's the secretary of ag,  
19    was probably involved in that process, as well. I  
20    think just because of the background in the area and  
21    involvement in other aspects of agricultural  
22    situations with zoning or the land use planning, I'm  
23    assuming that is why I was nominated for that  
24    position.

25        Q.     Mr. Carrasco, how do you receive information

1     **about water use and conditions in the Lower Rio**  
2     **Grande?**

3         A.     Probably same source as everybody else does,  
4     and that is Elephant Butte actually -- the Elephant  
5     Butte District actually has a very good Website that  
6     provides quite a little bit of information. They also  
7     have informational meetings generally on an annual  
8     basis, but there's other sources that, you know, are  
9     available to us. You know, probably most of the  
10    information is from direct conversations with farmers.  
11    We spent a lot of time talking to farmers, trying to  
12    understand what their needs are, and -- and most of  
13    the information we will have from actual farmers that  
14    -- that are impacted by water situation there in that  
15    basin.

16         **Q.     Okay. Let's turn, Mr. Carrasco, to your work**  
17     **with Farm Credit of New Mexico. Based on your CV and**  
18     **history, it looks like you've spent, all told, about**  
19     **35 years with Farm Credit of New Mexico; is that about**  
20     **right?**

21         A.     That's correct.

22                 **MS. DALRYMPLE:** Ms. Ferguson, could you  
23     please pull up New Mexico Demo 26?

24         **Q.     (BY MS. DALRYMPLE) And, Mr. Carrasco, I'd**  
25     **like to ask you to describe to us what Farm Credit of**

1     **New Mexico does.**

2                   **MR. DEITCHMAN:** Your Honor, I just would  
3     like to object to relevance. I'm not sure why that's  
4     relevant to this case.

5                   **MS. DALRYMPLE:** Your Honor, this is --  
6     this has been listed as Category A, no objection. I  
7     move for its admittance.

8                   **MR. DEITCHMAN:** I don't object to the  
9     exhibit. I'm just objecting to the testimony --

10                  **MR. DUBOIS:** You're on mute, Your Honor.

11                  **MR. DEITCHMAN:** -- about Farm Credit.

12                  **MS. DALRYMPLE:** Farm Credit, as  
13     Mr. Carrasco will establish, is well settled in the  
14     community. Based on his job with Farm Credit, he has  
15     extensive experience with farmers, with their  
16     financial needs, with investments in the community,  
17     and if you'll give me a little leeway, he'll explain  
18     that.

19                  **MR. DUBOIS:** You're on mute, Your Honor.

20                  **MS. DALRYMPLE:** Your Honor, I think  
21     you're on mute.

22                  **JUDGE MELLOY:** Go ahead. Did you have  
23     something you wanted to say, Mr. Dubois?

24                  **MR. DUBOIS:** I was just saying, Your  
25     Honor, you're on mute.

1                   **JUDGE MELLOY:** Okay. For the record,  
2 New Mexico Demo 25 and 26 are both listed as A  
3 exhibits so it will be admitted. I'll allow the  
4 testimony. I'm not sure where we're going with all  
5 this, but go ahead.

6                   **MS. DALRYMPLE:** Thank you.

7           **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, I'm trying  
8 to get back to my question. Oh, could you describe to  
9 us what Farm Credit of New Mexico does?

10          A. Basically, Farm Credit of New Mexico is a  
11 co-op. It's owned by its members. It provides a  
12 number of services. The biggest portion of that is  
13 lending funds into agriculture, whether that's real  
14 estate loans under mortgages, operating loans. We  
15 also provide some equipment in agribusiness loans and  
16 some insurance services.

17          **Q. This --**

18          A. It's about a \$2 billion company in the state  
19 of New Mexico. It is the major source of agricultural  
20 financing in the state.

21          **Q. And what are the primary types of loans that**  
22 **Farm Credit extends to its clients?**

23          A. There 'd be two basic categories. One would  
24 be real estate loans. Those are loans backed up by  
25 farm real estate. Those are typically longer-term

1 loans, longer than seven-year term periods. The  
2 operating loans are typically operating cycle type  
3 loans or equipment loans that are paid over a shorter  
4 period of time.

5 **Q. To your knowledge, is Farm Credit one of the**  
6 **largest lenders to farming and farming operations in**  
7 **Southern New Mexico?**

8 A. It is clearly the largest lender in the area.

9 **Q. And could you please describe your client**  
10 **base in the Lower Rio Grande?**

11 A. Our clients include a large number of farmers  
12 that are multigenerational. We have had a  
13 relationship with most of them. During my career, and  
14 going on third generations in many instances, but they  
15 include farmers in the area, agri businesses that  
16 process and market those kind of products, dairy  
17 farms. So it's the whole array of agribusinesses and  
18 farming that takes place in the Lower Rio Grande  
19 Basin.

20 **Q. Mr. Carrasco, what is Farm Credit's goal when**  
21 **it extends credit or makes a loan to a farming**  
22 **operation?**

23 **MR. DEITCHMAN:** Objection, Your Honor.  
24 I think it would be helpful to clarify for the record  
25 whether Mr. Carrasco is testifying in his personal

1 capacity or on behalf of Farm Credit.

2 MS. DALRYMPLE: Mr. --

3 JUDGE MELLOY: Go ahead.

4 MS. DALRYMPLE: Mr. Carrasco is here in  
5 his personal capacity as a former officer and 35-year  
6 employee of Farm Credit based on -- and will discuss  
7 his experience during that time period.

8 JUDGE MELLOY: Go ahead.

9 MS. DALRYMPLE: Let me just look at the  
10 question again.

11 Q. (BY MS. DALRYMPLE) Mr. Carrasco, can you tell  
12 me what is Farm Credit of New Mexico's goal when it  
13 extends credit or makes a loan to a farming operation?

14 A. As structured as a co-op and per its mission  
15 it's to increase the viability of -- they're a farming  
16 operation in the general rural economy of the area and  
17 so the goal is to provide capital in a manner that's  
18 useful and helpful to that operator so that they can  
19 meet their goals financially and to basically provide  
20 a basis for the rural economy in the area.

21 Q. Mr. Carrasco, can you just briefly describe  
22 the lending process to us? What's involved? If I  
23 come into you and I own a farm in the LRG and I need a  
24 loan, what's the process we go through?

25 MR. DEITCHMAN: Objection; relevance.

1                   **JUDGE MELLOY:** Where are we going with  
2 this, Ms. Dalrymple? I'm having some trouble  
3 following the relevance of all of this.

4                   **MS. DALRYMPLE:** Your Honor, I would like  
5 -- Mr. Carrasco will establish the fact that the  
6 community, the economics in the Lower Rio Grande are  
7 based on historic understanding and historic  
8 conditions relating to the agricultural community  
9 there, which were based on reliance on certain water  
10 conditions through the years upon which the entire  
11 community down there has been built. We look to the  
12 historic conditions there to make forward-looking  
13 decisions. You heard from Mr. Salopek about the  
14 significant investment he's made based on his  
15 understandings of what New Mexico waters he was  
16 entitled to, and I think Mr. Carrasco will establish  
17 that, in fact, the entire community has based  
18 expectations and forward plans on those historic  
19 conditions and understanding of the regulatory  
20 environment.

21                   **MR. DUBOIS:** Your Honor, if I may? I'm  
22 sorry.

23                   **JUDGE MELLOY:** Go ahead.

24                   **MR. DUBOIS:** Your Honor, I mean, what  
25 Ms. Dalrymple is -- is describing is clearly expert



1 testimony that was not disclosed. As -- as  
2 Mr. Deitchman said, New Mexico had the opportunity to  
3 disclose this witness as a nonretained expert and did  
4 not, but the economic valuation of regional areas is  
5 not a matter of personal perception. That is --  
6 that's a matter of training and experience. Under  
7 702, he wants to testify as an expert. He has not  
8 been qualified as an expert or identified as an  
9 expert. This is exactly what Mr. Deitchman was  
10 talking about earlier.

11 **MR. DEITCHMAN:** And, further, Your  
12 Honor, if he's going to testify about historic  
13 conditions, I think is the word Ms. Dalrymple used, he  
14 certainly is not a historian, has not been identified  
15 as a historian or disclosed as a historian.

16 **MS. DALRYMPLE:** Your Honor, New Mexico  
17 is not proffering any expert testimony -- veiled  
18 expert testimony through Mr. Carrasco. We are not  
19 going to talk about numbers. We're going to talk  
20 about the New Mexico understanding -- we're not going  
21 to talk about any numbers. What we have the right to  
22 do at this stage when injunctive relief is on the  
23 table is to establish our right to injunctive relief.  
24 Numbers, quantification, whatever --

25 **JUDGE MELLOY:** Hold on just a second.

1 I'll have to go look at your counterclaim. Are you  
2 asking for injunctive relief?

3 **MS. DALRYMPLE:** We have -- I'm sorry,  
4 Your Honor. We have -- we have affirmative defenses  
5 that are equitable and that would be the more proper  
6 way for me to say that.

7 **JUDGE MELLOY:** Well -- all right. It  
8 just seems to me that Mr. Dubois and Mr. Deitchman are  
9 pretty close and spot on that what we're talk about is  
10 historical expert witnesses, appraisal expert  
11 witnesses, and economists. You know, if you want to  
12 ask him what the interest rate was in 1982 when he was  
13 employed by Farm Credit, yeah, he can probably talk  
14 about that if it's relevant, but to talk about  
15 economic trends, that's what economists do. Talk  
16 about what a land is appraised to, I mean, you --  
17 right on his CV, he says he's -- he's been qualified  
18 as an expert in appraisal. I'll let you go a little  
19 ways, but -- but I -- I'm having real trouble seeing  
20 how this isn't expert testimony.

21 **MS. DALRYMPLE:** Thank you.

22 **MR. DUBOIS:** And I would point out in  
23 addition, Your Honor, his -- his testimony is  
24 apparently not even just limited to his perceptions,  
25 but he wants to talk about the land and agricultural

1 within the entire Lower Rio Grande Basin, and, again,  
2 I -- I'm beating a dead horse, but it's clearly expert  
3 witness.

4 JUDGE MELLOY: Let's see where this  
5 goes, and we'll -- well, okay. I don't think we need  
6 to spend a lot of time on the application process for  
7 a loan.

8 MS. DALRYMPLE: Sure.

9 JUDGE MELLOY: But let's go ahead.

10 MS. DALRYMPLE: Thank you, Your Honor.

11 Q. (BY MS. DALRYMPLE) Mr. Carrasco, in your role  
12 with Farm Credit over 35 years, can you explain to us  
13 how you as a Farm Credit lender historically factored  
14 water use and availability as a risk when you  
15 personally were looking at loan applications?

16 MR. DUBOIS: Objection, again, Your  
17 Honor, this is asking for expert testimony because it  
18 is by dint of his training experience over his 35  
19 years as a lender that he's making these assessments.

20 MR. DEITCHMAN: Texas joins the  
21 objection.

22 MS. DALRYMPLE: Your Honor, we'll --

23 JUDGE MELLOY: I'll let him talk about  
24 his personal experience. Go ahead.

25 MS. DALRYMPLE: Thank you.

1           Q.    (BY MS. DALRYMPLE) Do you remember the  
2 question, Mr. Carrasco?

3           A.    If you could restate it, please.

4           Q.    Sure. Mr. Carrasco, in your role with Farm  
5 Credit over 35 years, can you explain to us how you as  
6 a farm credit lender historically factored water use  
7 and availability as a risk when you looked at loan  
8 applications?

9           A.    Yes. From my immediate hiring, I was told  
10 this is one of the factors that we absolutely have to  
11 look at. The Federal Land Bank of Wichita, which we  
12 were under at that time, had district engineers,  
13 engineering appraisers. A gentleman by the name of  
14 Dexter Henderson who worked for the Bureau was hired  
15 and he came down and we spent time and he told us that  
16 --

17                   MR. DUBOIS: Objection; hearsay.

18                   MR. DEITCHMAN: Join the objection.

19           Q.    (BY MS. DALRYMPLE) Mr. Carrasco, can you  
20 just, in general, explain your understanding of how --  
21 of why water was evaluated as a risk -- I'm sorry --  
22 water use was evaluated as a risk?

23           A.    Yes. Let me get more focused then. And that  
24 is, is that you don't grow anything in that valley  
25 without irrigation water, it is simply not feasible to

1 plant the crop if you don't have irrigation water. 6  
2 inches of rainfall won't do it, and so the stability  
3 and the source of that water, the ability to secure  
4 that as collateral is absolutely critical from a  
5 lending standpoint.

6 Q. Mr. Carrasco, today or before February, when  
7 you retired, would you loan to a farming operation  
8 that did not have groundwater rights?

9 A. No. Simply the lack of inability in the  
10 amount of surface water only available in Lower Rio  
11 Grande is not sufficient to provide for feasible crop  
12 production.

13 Q. Mr. Carrasco, in your position with Farm  
14 Credit of New Mexico, have you made loans to non-farm  
15 businesses that are related to the agricultural  
16 sector?

17 A. Yes.

18 Q. Can you give me some examples? Can you give  
19 us an example of what's non-farming operation but  
20 related to the agricultural industry?

21 A. Yes, ma'am. With specialized crops, vertical  
22 integration into marketing is absolutely critical, so  
23 we have a number of chile dehydration plants, green  
24 chile processing plants, pecan sorting and storage  
25 facilities. We have a large number of onion sorting

1 and shipping facilities. We've made loans on cotton  
2 gin operations. There's a large number of  
3 agribusinesses that are tied to this industry in that  
4 area.

5 Q. Mr. Carrasco, it seems to me what you're --  
6 can you tell me if -- if the loans to farm operations  
7 and farming agriculturally-related businesses, does  
8 that have a ripple effect?

9 MR. DEITCHMAN: Objection --

10 MR. DUBOIS: Objection --

11 MR. DEITCHMAN: -- calls for expert  
12 testimony.

13 JUDGE MELLODY: I'll sustain that.

14 Q. (BY MS. DALRYMPLE) Okay. Mr. Carrasco,  
15 you've been involved in lending to the Lower Rio  
16 Grande farming community for some 35 years. You've  
17 testified a little bit about loaning directly to  
18 farming operations. Can you tell me when you have a  
19 farming operations loan application in front of you,  
20 what -- what do you consider when you decide whether  
21 that's going to be a good loan?

22 A. The factors are similar to any other credit,  
23 and that would be a character factor assessment, which  
24 in this area very much includes an assessment of  
25 management. It also includes an assessment of

1 vertical integration to the agribusinesses that  
2 support these either by association or by contract, an  
3 assessment of financial feasibility as a company,  
4 including historical performance on it, but also the  
5 collateral, and the collateral is very much highly  
6 dependent in this area on the availability of a stable  
7 water supply --

8 **MR. DUBOIS:** Objection, Your Honor, he's  
9 getting into appraisal factors, and this is clearly  
10 expert testimony again.

11 **MR. DEITCHMAN:** Join.

12 **JUDGE MELLOY:** He's talking about his  
13 experience as to what are lending factors, so I will  
14 -- I will -- you may finish your answer.

15 A. So the final portion of that would be, of  
16 course, the conditions that a loaner is led under  
17 would include several things but also would include  
18 the ability to secure that loan against the assets  
19 that are pledged, and in this case, would be water  
20 rights, as well, as the land surface.

21 **Q. (BY MS. DALRYMPLE)** So water rights are  
22 considered the land surface, the infrastructure or  
23 investments on the property itself; is that correct?

24 A. That is correct.

25 **Q.** In your work, Mr. Carrasco, for 35 years with

1     **Farm Credit**, have you considered the role that Rio  
2     **Grande Project** surface water plays in the economic  
3     **output of that region?**

4                     **MR. DEITCHMAN:** Objection; calls for  
5     expert testimony.

6                     **JUDGE MELLOY:** I'll let him answer. Go  
7     ahead.

8             A.     Yes. Again, in that area, irrigated -- I  
9     mean, crop production is just not possible, whether  
10    it's permanent plantings like pecan trees or annual  
11    crop without irrigation water, that'd be both surface  
12    irrigation water as well as the underground water.  
13    The quality of that water will also drive the  
14    production of that land and the surface water is just  
15    simply better quality water than the groundwater  
16    that's pumped.

17                    **MR. DUBOIS:** Objection to that and ask  
18    that that be stricken. Again, he's making expert  
19    testimony regarding water quality and farm production,  
20    and he hasn't been qualified for that at all.

21                    **JUDGE MELLOY:** Well, I'll leave it in.  
22    I mean, I don't think there's -- I mean, a lot of  
23    people have testified to that on both sides already so  
24    I don't think there's -- that's a matter of great  
25    dispute.



1                   Go ahead.

2                   **MS. DALRYMPLE:** Thank you, Your Honor.

3                   **Q.** (BY **MS. DALRYMPLE**) Mr. Carrasco, I'm going to  
4 ask you just a couple questions of what's been -- we  
5 know as the 2008 Operating Agreement. Are you  
6 familiar with the 2008 Operating Agreement?

7                   A. Yes.

8                   **Q.** How did you become familiar with the  
9 operating agreement?

10                  A. I became familiar mostly because of  
11 conversations with farmers as they were coming in  
12 asking for additional credit, drill additional wells  
13 or replacement wells. They were pointing towards the  
14 fact that they were not --

15                  **MR. DUBOIS:** Objection, Your Honor;  
16 hearsay.

17                  **MR. DEITCHMAN:** Join the objection.

18                  **JUDGE MELLOY:** I'll sustain it.

19                  **Q.** (BY **MS. DALRYMPLE**) Mr. Carrasco, in  
20 discussing how you became familiar with the operating  
21 agreement, other than what you heard directly from  
22 farmers about their needs for new loans, were there  
23 other ways that you became aware of the operating  
24 agreement?

25                  A. Since I was aware of it, I did have to make

1 presentation to our board of directors. I do have a  
2 copy of it saved on the server, and I have looked at  
3 it.

4 **Q. Mr. Carrasco, why did you have to advise your**  
5 **board of directors about the operating agreement?**

6 A. It was my responsibility to basically advise  
7 them of any major aspects that were taking place in  
8 the -- in my lending area that might affect loan  
9 quality or performance.

10 **Q. Well, what was it about the operating**  
11 **agreement that made you think it might affect loan**  
12 **quality or performance?**

13 A. I'm not a hydrologist or an engineer or  
14 anything else, but I'm pretty good with numbers, and  
15 if you look at the hypothetical examples within the  
16 operating agreement, the outcomes become very  
17 different between the two districts.

18 **Q. The outcomes become very different. Can you**  
19 **explain that to me, please?**

20 **MR. DEITCHMAN:** Objection; calls for  
21 expert testimony.

22 **MR. DUBOIS:** And he's got no foundation  
23 for -- as he said, he's not a hydrologist or an  
24 engineer, and he wants to give engineering testimony  
25 now.

1                   **JUDGE MELLOY:** He can testify as to what  
2 he told his Board. Go ahead.

3                   **MS. DALRYMPLE:** Thank you.

4           A.     Within the operating agreement are two  
5 hypothetical examples of what happens with a full  
6 amount of water and less than a full amount of water  
7 available to the two districts or to the Bureau to  
8 District to the two districts. If you follow just  
9 through the math in those two hypothetical examples,  
10 you know, the outcome is much different between the  
11 two districts as to the water available on a per-acre  
12 basis.

13           **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, that's the  
14 substance of what -- or part of the substance of what  
15 you described to your Board, after reviewing the  
16 operating agreement. Since that time, do you know if,  
17 in fact, the operating agreement has resulted in a  
18 difference in water to the districts?

19           **MR. DEITCHMAN:** Objection; calls for  
20 expert testimony. This is clearly asking for expert  
21 testimony, not what he told the Board.

22           **JUDGE MELLOY:** I'm going to sustain  
23 that.

24           **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, as a farmer  
25 of acreage in the Project, in the Rio Grande Project,

1 do you keep track of the EBID allotments?

2 A. I do.

3 Q. Do you know what you're allotted this year?

4 A. 4 inches per acre.

5 Q. Do you have any reason to keep track of the  
6 allotments to the Texas District EP No. 1?

7 A. I do not.

8 Q. Do you ever visit their Website?

9 A. I have not.

10 Q. Okay. Thank you. Mr. Carrasco, through your  
11 work with Farm Credit and your discussion with your  
12 farmer clients and as a farmer yourself, are you aware  
13 of any practical effects with regard to what you do  
14 and did for 35 years with Farm Credit that result from  
15 the operating agreement?

16 A. Yes. It appears like there is inequity of  
17 the water that's been delivered between the two  
18 districts.

19 Q. Did you -- can you differentiate these  
20 differences in quantity based on your experience as a  
21 farmer and as a lender from -- between the operating  
22 agreement versus being a product of the drought that  
23 we all know we've been going through?

24 MR. DEITCHMAN: Objection; calls for  
25 expert testimony.

1                   **MR. DUBOIS:** And objection to the form  
2 of the question because she's asking him a two-part  
3 question, one as a lender and one as a farmer, and  
4 we'll get into the amount of farming there is actually  
5 in cross, but it's a compound question.

6                   **JUDGE MELLOY:** All right. Break it out.

7                   **MS. DALRYMPLE:** Sure. I have to think  
8 of what I was asking.

9                   **Q. (BY MS. DALRYMPLE)** Mr. Carrasco, you  
10 testified that one of the issues you discussed with  
11 your Board was your concern that the operating  
12 agreement was going to provide different amounts of  
13 water to the New Mexico farmers versus the Texas  
14 farmers. Do you recall that testimony?

15                  **A.** I do.

16                  **Q.** And do you know if, in fact, that is what  
17 happened?

18                  **A.** Yes.

19                  **Q.** How do you know what you're about to tell me?  
20 How do you know that there is a difference?

21                  **A.** Because Farm Credit of New Mexico also had  
22 loans in the Lower Rio Grande or -- we called it the  
23 Lower Rio Grande, but it's basically EP Improvement  
24 District No. 1, so we had loans in both districts and  
25 were aware that different amounts of water were being

1 delivered into two different districts.

2 Q. Thank you. Mr. Carrasco, are you aware that  
3 New Mexico sued the Bureau of Reclamation and EBID  
4 over the 2008 Operating Agreement in August of 2011?

5 A. I was, yes.

6 Q. How were you aware of that?

7 A. It hit the papers. I mean, it's fairly well  
8 known in the area that the filing took place.

9 Q. And did you have to report that information  
10 to anyone?

11 A. I did. I made a presentation on it also to  
12 the Board.

13 Q. Why did you present that to the Board?

14 A. Again, it was just another risk that might  
15 impact that loan portfolio in that area.

16 Q. Mr. Carrasco, are you -- well, let me  
17 rephrase that.

18 How did you become aware of the Supreme Court  
19 lawsuit in which you are testifying.

20 A. Pretty much the same way. It was reported in  
21 the papers and well known in the community.

22 Q. Do you follow this litigation?

23 A. Somewhat. You know, I have a general idea of  
24 what it is.

25 Q. Is this also of the level of magnitude that

1     you had to report it to your Board?

2         A.     It is.

3         Q.     In general, what's the deciding factor for  
4     what information you have to bring to your board in  
5     terms of how it might impact a portfolio?

6                 MR. DEITCHMAN:  Objection, Your Honor.  
7     I just want to be clear, the question is phrased in  
8     the way that's in the present tense, but I understand  
9     that Mr. Carrasco is retired.

10                JUDGE MELLOY:  I understand the question  
11    to refer to when he was still an employee at Farm  
12    Credit.

13                Go ahead.

14         A.     That would be factors that would impact a  
15    general area that would be more of a -- an action that  
16    would cover a significant portion of a portfolio that  
17    could change a risk assessment.  We also have to make  
18    disclosures to the Farm Credit Administration and  
19    auditors of any issues out there that may have an  
20    adverse impact to loan quality, performance, and  
21    repayments.

22         Q.     (BY MS. DALRYMPLE)  Mr. Carrasco, are you  
23    aware of what relief Texas is asking for in this  
24    litigation?

25         A.     In --

1                   MR. DUBOIS:  Objection; relevance.

2           Q.     (BY MS. DALRYMPLE)  Mr. Carrasco --

3                   JUDGE MELLOY:  Well, just a second.  I  
4  didn't -- I'll let him answer.

5           Q.     (BY MS. DALRYMPLE)  Do you want me to repeat  
6  that?

7           A.     If you could restate -- yes, please.

8           Q.     Sure.  Do you know, Mr. Carrasco, what relief  
9  Texas is seeking from New Mexico in this litigation?

10          A.     In general terms, the groundwater pumping in  
11  New Mexico was interfering with the delivery of  
12  Project water to Texas.

13          Q.     That's their claim.  Mr. Carrasco, let me ask  
14  you:  Do you know what Texas is asking for to get out  
15  of this litigation?

16          A.     I do not.

17          Q.     Mr. Carrasco, if -- if as a result of this  
18  litigation, there is significant limitation put on  
19  groundwater pumping in New Mexico, do you have an  
20  opinion of how that might impact Farm Credit's  
21  business?

22                   MR. DEITCHMAN:  Objection; calls for  
23  expert testimony.

24          Q.     (BY MS. DALRYMPLE)  Do you have an opinion as  
25  to how it might impact Farm Credit's lending policies



1 and procedures?

2 MR. DEITCHMAN: Same objection.

3 JUDGE MELLOY: Go ahead. You can  
4 answer.

5 A. Yes. Basically in a decision that greatly  
6 curtailed the availability of surface water and  
7 groundwater that would impact the productivity of  
8 those farms in that area, and because of that, the  
9 agribusinesses that are dependent on it would have a  
10 major impact on Farm Credit.

11 Q. (BY MS. DALRYMPLE) It would have a major  
12 impact on Farm Credit in relationship to the loans  
13 that it's able to make and extend to its members and  
14 borrowers; is that --

15 MR. DUBOIS: Objection; leading.

16 Q. (BY MS. DALRYMPLE) How would the impact to  
17 Farm Credit impact its -- how would this negative  
18 impact to Farm Credit impact its members and  
19 borrowers?

20 A. If these farmers were not able to -- to plant  
21 their entire acreage or they weren't able to hit the  
22 productivity levels that they're used to having and  
23 that they have based their business plans on and their  
24 credit requests from us on, it would have a very  
25 negative impact on them.

1           **Q.**     And would that negative impact on your  
2     farming clients have an impact on those other  
3     industries and businesses that you have testified are  
4     related to the farming operations business you do?

5                     **MR. DUBOIS:**   Objection --

6                     **MR. DEITCHMAN:**   Objection; leading.

7                     **MR. DUBOIS:**   And calls for expert  
8     testimony.

9                     **JUDGE MELLOY:**   Go ahead.   You can  
10    answer.

11           **A.**     Absolutely.   You know, the integration of  
12    marketing, processing into a valley, specialized  
13    crops, anything that impacts the growing of those  
14    specialized crops is going to impact both the input  
15    side in that economy as well as the finishing and  
16    marketing portion of those economy.   So anything that  
17    would limit what would be produced in that valley from  
18    what has been historically produced at the  
19    productivity levels that it has seen will have an  
20    adverse impact.

21                     **MS. DALRYMPLE:**   Mr. Carrasco, I don't  
22    have any more questions.   Thank you.

23                     **JUDGE MELLOY:**   Mr. Deitchman?

24                     **MR. DEITCHMAN:**   Thank you.   Yeah, I have  
25    a couple questions.

## CROSS-EXAMINATION

BY MR. DEITCHMAN:

Q. Mr. Carrasco, you've heard my voice, but I'll introduce myself. My name is Rich Deitchman. I'm one of the attorneys for Texas in this case. Nice to meet you today. I think this is pretty clear from the record, but I want to make sure it's clear on the record. You have not been disclosed as an expert in this litigation, correct?

A. That is correct.

Q. Okay. And you're currently retired, correct?

A. I'm currently retired. My wife says I'm failing badly so I do do some independent consulting work, both for Farm Credit and some other clients.

Q. And I'm correct that you retired from Farm Credit in February of 2021, right?

A. That is correct.

Q. I'll represent to you that on the witness list that New Mexico provided in this litigation, they listed you as VP and senior relationship manager of Farm Credit of New Mexico. Were you involved in listing that role and providing advice to list that role on the witness list?

A. I don't know the date of that -- that witness list. I provided at some point in time that

1 information.

2 Q. Are you being paid to be here today?

3 A. I am not.

4 Q. And you -- let's take a look at Demonstrative  
5 25, which was your resume. If Justin can pull that  
6 up. You testified earlier today that this is an  
7 accurate resume; am I right?

8 A. Yes, sir.

9 Q. But you also testified that you're an  
10 interstate Stream Commissioner, correct?

11 A. I am.

12 Q. Is there a reason you didn't list that on  
13 your resume?

14 A. There's not a reason. I didn't know if it  
15 was appropriate on there or not.

16 Q. Did you prepare this resume in anticipation  
17 of testifying today?

18 A. I did.

19 Q. And if I remember your testimony correctly,  
20 you were appointed the ISC commissioner in July of  
21 2009, right -- 2019, right?

22 A. Yes. July, 2019.

23 Q. Was the ISC commissioner position -- is the  
24 ISC commissioner position that you're in, is that for  
25 the Lower Rio Grande region?

1           A.    I don't know if it's specific to the Lower  
2 Rio Grande region or not.

3           Q.    And prior to your appointment to that  
4 position, was that position vacant?

5                   MS. DALRYMPLE: Your Honor, I'm going to  
6 object as outside the scope. We specifically did not  
7 go into the ISC Commission issues.

8                   MR. DEITCHMAN: He did testify that he's  
9 a commissioner for the Lower Rio Grande.

10                  JUDGE MELLOY: Well, I'll allow some of  
11 this. Go ahead.

12           Q.    (BY MR. DEITCHMAN) Do you need me to repeat  
13 the question?

14           A.    If you would, please.

15           Q.    Okay. So prior to your appointment as the  
16 ISC commissioner, was that position that you took, was  
17 that position vacant?

18           A.    You know, I don't know. I assume that with a  
19 new governor, she appointed a new set of  
20 commissioners, and so it was probably vacant for some  
21 period of time, and then I was appointed.

22           Q.    So if I understand your testimony, you're an  
23 ISC commissioner statewide; it doesn't have a focus on  
24 the local Lower Rio Grande Region?

25           A.    I believe that appointments are statewide.

1 They try to get some geographic diversity when they  
2 make those appointments, but, no, I don't have a  
3 constituency in that specific area.

4 Q. Just one more question on that topic. Isn't  
5 it true that in the over two years that you've been an  
6 ISC commissioner for the Lower Rio Grande, you've not  
7 met with the EBID board in your role as ISC  
8 commissioner; is that correct?

9 MS. DALRYMPLE: Objection; relevance.

10 JUDGE MELLODY: Overruled. Do you need  
11 the question repeated?

12 A. If you would, please. I'm sorry.

13 Q. (BY MR. DEITCHMAN) Sure. Isn't it true that  
14 in the over two years that you've been an ISC  
15 commissioner for the Lower Rio Grande, you've not met  
16 with the EBID board in your role as ISC commissioner;  
17 is that correct?

18 MS. DALRYMPLE: Objection; assumes facts  
19 that are -- that we've just established are not true.  
20 He is not a ISC commissioner for the Lower Rio Grande.

21 MR. DEITCHMAN: He already overruled the  
22 objection to the question. I was just repeating it.

23 MS. DALRYMPLE: I didn't hear it the  
24 first time, Your Honor. I'm sorry. I didn't hear the  
25 modifier.

1                   **JUDGE MELLOY:** Go ahead. You may  
2 answer.

3           A. I have not met in my role as an ISC  
4 commissioner with Elephant Butte District Board.

5           **Q. (BY MR. DEITCHMAN)** Just a couple more  
6 questions on different topics. So you testified that  
7 you own land within the Elephant Butte Irrigation  
8 District; is that correct?

9           A. I do.

10          **Q. How many acres of land do you own in EBID?**

11          A. About 86 acres, I believe.

12          **Q. Okay. And what kind of crops do you grow on**  
13 **that land?**

14          A. That farm this year was planted in triticale  
15 for the first part of the year on a small portion of  
16 it, but it's basically been in alfalfa for the balance  
17 of the year.

18          **Q. Do you farm it yourself or do you lease it?**

19          A. Well, there's three properties. There's the  
20 60-acre tract that is crop shared with Bobby Sloan,  
21 who testified, I believe, the other day. Him and his  
22 son, James Sloan, under Monte Vista Farms, farms that  
23 on a risk share kind of a crop share basis. There's  
24 two other tracts, one is cash leased out to an  
25 adjacent farmer, and then the tract there where I

1 live, I operate myself.

2 Q. And do you -- do you lease any of the water  
3 that's associated with your 86 acres of land to  
4 others?

5 A. No.

6 MR. DEITCHMAN: Your Honor, Texas has no  
7 further questions for this witness.

8 JUDGE MELLODY: Mr. Dubois?

9 MR. DUBOIS: I've only got a couple,  
10 Your Honor, to follow up.

11 CROSS-EXAMINATION

12 BY MR. DUBOIS:

13 Q. Good afternoon, Mr. Carrasco. My name is  
14 James Dubois. I'm with the United States. I'm with  
15 the Department of Justice representing the United  
16 States in this case. On the land that you say you  
17 irrigate yourself, that totals 3.4 acres, am I right?

18 A. That is correct.

19 Q. Okay. And you have a well on that to  
20 supplement?

21 A. I do, yes.

22 Q. Did you have any shortage of water this year  
23 as far as total water available to irrigate that land?

24 A. Not if you include both the groundwater as  
25 well as the surface water. I got 4 inches of surface



1 water that balances --

2 Q. And how deep is your groundwater well?

3 A. That well is about 157 feet, I believe.

4 Q. So it's basically a very shallow well. How  
5 close are you to the Rio Grande?

6 MS. DALRYMPLE: Objection; relevance;  
7 outside scope.

8 JUDGE MELLODY: Overruled.

9 You may answer.

10 A. Approximately 2 miles, I believe.

11 Q. (BY MR. DUBOIS) Okay. And the 2008 Operating  
12 Agreement didn't prohibit you from pumping water from  
13 your well, did it?

14 A. Not in 2021, no, sir.

15 Q. Okay. So operating under the 2008 operating  
16 plan, you had no shortage of water in 2021, correct?

17 A. That would be correct.

18 Q. Okay. That's fine.

19 A. Just a very short surface water delivery.

20 Q. Understand. It's basically a horse pasture  
21 you've got, right?

22 A. It -- it's used for bull development, but  
23 yes, sir.

24 Q. You're talking about, and you were allowed to  
25 testify, that an outcome that reduces the water

1     availability with EP -- EBID affects Farm Credit risks  
2     within EBID; is that what I understood you to say?

3         A.     I'm sorry.  If you could restate that, I'd  
4     appreciate it.

5         Q.     An outcome of this case that reduces surface  
6     water availability to EBID, I believe you said that it  
7     affects Farm Credit's -- Farm Credit Company's risks  
8     within EBID.  Was that -- is that what I understood?

9                 MS. DALRYMPLE:  I need to object.  I  
10    think that what he testified to was that an outcome  
11    that restricts surface water and -- and/or  
12    groundwater.

13                MR. DUBOIS:  All right.

14                MS. DALRYMPLE:  I believe that's what we  
15    were talking about.

16                MR. DUBOIS:  Okay.

17         A.     I will answer it as to, yes, if there's an  
18     outcome that restricted the use of surface water  
19     combined with the groundwater below the historical  
20     productivity levels would impact Farm Credit's  
21     portfolio.

22         Q.     (BY MR. DUBOIS)  And would an outcome on this  
23     case that reduced water availability to EP1 affect  
24     Farm Credit's risks within Texas?

25                MS. DALRYMPLE:  Objection; no foundation

1 for -- for Mr. Carrasco's knowledge of what goes on in  
2 the Texas region.

3 **MR. DUBOIS:** He's already testified --

4 **JUDGE MELLOY:** He's already testified  
5 that he knows what goes on in the Texas region, and  
6 they got loans out there, so I'll overrule.

7 A. If I could get the question again, please.

8 **Q. (BY MR. DUBOIS)** Sure. And would an outcome  
9 of this case that reduces water availability to EP1  
10 affect Farm Credit's risks within Texas?

11 A. An outcome of this case that affected their  
12 ability to use both surface water and groundwater in  
13 Texas would impact Farm Credit.

14 **Q. Okay. Thank you. One just final question**  
15 **just to be clear. Your Slash 3C Ranch, that's not**  
16 **within EBID, is it?**

17 A. No, sir. It's out on the mesa. It's --

18 **Q. That's what I thought.**

19 A. -- a desert ranch.

20 **Q. Okay. That's what I thought.**

21 **MR. DUBOIS:** All right. Nothing  
22 further, Your Honor. Thank you.

23 **JUDGE MELLOY:** Ms. Dalrymple, any  
24 redirect?

25 **MS. DALRYMPLE:** No, Your Honor. Thank

1 you.

2 **JUDGE MELLOY:** All right. Then the  
3 witness is excused. We appreciate your testimony,  
4 Mr. Carrasco, and you're free to go. Thank you very  
5 much.

6 **THE WITNESS:** Thank you.

7 **JUDGE MELLOY:** Should we take five  
8 minutes to let you get your next witness situated,  
9 Ms. Dalrymple?

10 **MS. DALRYMPLE:** We'd appreciate that,  
11 Your Honor. Thank you.

12 **JUDGE MELLOY:** All right.

13 (Recess.)

14 **JUDGE MELLOY:** All right. Are we ready  
15 to get started with our next witness? Why don't I get  
16 appearances for this session. For Texas,  
17 Mr. Deitchman, you're still on?

18 **MR. DEITCHMAN:** Yes. Rich Deitchman for  
19 Texas.

20 **JUDGE MELLOY:** Mr. Dubois, you're still  
21 on for the United States.

22 **MR. DUBOIS:** I am.

23 **JUDGE MELLOY:** Mr. Ogaz, you're  
24 appearing for --

25 **MR. OGAZ:** New Mexico.

1                   **JUDGE MELLOY:** And New Mexico -- I'm  
2                   sorry. I can't recall your name, sir.

3                   **MR. HARTMAN:** Preston Hartman for the  
4                   State of Colorado. Sorry if my name tag is incorrect.

5                   **JUDGE MELLOY:** All right. New Mexico  
6                   may call its next witness.

7                   **MR. OGAZ:** Thank you, Your Honor. The  
8                   State of New Mexico called Shayne Franzoy.

9                   **JUDGE MELLOY:** Mr. Franzoy, I need to  
10                  swear you in as a witness. Would you raise your right  
11                  hand, please? Do you swear or affirm that the  
12                  testimony you're about to give will be the truth, the  
13                  whole truth, and nothing but the truth?

14                  **THE WITNESS:** Yes.

15                  **JUDGE MELLOY:** Would you state and spell  
16                  your name for the record, please?

17                  **THE WITNESS:** Rodney Shayne Franzoy.  
18                  It's R-O-D-N-E-Y, Shayne, S-H-A-Y-N-E, Franzoy,  
19                  F-R-A-N-Z-O-Y.

20                  **JUDGE MELLOY:** Mr. Franzoy, I need to  
21                  ask you a couple questions. First of all, is there  
22                  anyone in the room with you?

23                  **THE WITNESS:** No.

24                  **JUDGE MELLOY:** Do you have any documents  
25                  you'll be referring to other than the exhibit book?

1 THE WITNESS: No.

2 JUDGE MELLOY: I need to advise you that  
3 the witnesses are not allowed to have any  
4 communication devices such as iPhones, iPads, laptops  
5 that would have any type of communication capabilities  
6 such as texting or e-mail or so on. Do you  
7 understand?

8 THE WITNESS: Yes.

9 JUDGE MELLOY: All right. And then as  
10 far as exhibits are concerned, we have New Mexico 673,  
11 New Mexico 791 are both A exhibits and will be  
12 admitted. New Mexico Demonstrative 008, 023, and  
13 Demonstrative 024 are A exhibits and will be admitted.  
14 New Mexico Demonstrative No. 1 has been admitted for  
15 demonstrative purposes previously. We also have Texas  
16 Exhibit 155, which according to the submission we  
17 received is indicated as an admitted exhibit, however,  
18 our records do not show that that exhibit has been  
19 admitted. Is there any objection to its admission?

20 MR. OGAZ: There's no objections, Your  
21 Honor.

22 JUDGE MELLOY: All right. Exhibit 155  
23 -- Texas Exhibit 155 is admitted if it has not already  
24 been done so.

25 All right.

**MR. DEITCHMAN:** Your Honor, I believe there's also New Mexico 791. I don't know if I missed that.

**JUDGE MELLOY:** I missed it. I'm sorry. I did miss it.

**MR. DEITCHMAN:** Thank you.

**JUDGE MELLOY:** 791 is also admitted.

**MR. DEITCHMAN:** Thank you.

**JUDGE MELLOY:** Mr. Ogaz, you may proceed.

**MR. OGAZ:** Thank you, Your Honor.

RODNEY SHANE FRANZOY,  
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OGAZ:

**Q.** Good afternoon, Mr. Franzoy. Can you tell the Court where you currently live?

**A.** I live in Las Cruces, New Mexico.

**Q.** How long have you lived there?

**A.** Since 2008.

**Q.** Where are you originally from?

**A.** I am from Hatch, New Mexico, 40 miles north of Las Cruces.

**Q.** Okay. Can you tell the Court what you do for a living?

1           A.     Yes.   I own and manage a farming operation in  
2     the Hatch Valley.

3           **Q.     What is the name of your farming operation?**

4           A.     Chile River, Inc.

5           **Q.     Okay.   Was this a company that you started?**

6           A.     No.   Me and my dad started.   I used to --  
7     both of us used to farm on our own, and in 1996, we  
8     decided to put -- join together both of our operations  
9     under one umbrella.

10          **Q.     And where are your operations based out of?**

11          A.     Our farming operations, we have some farms in  
12     Hatch Valley.   We farm in Las Uvas and in Deming.

13          **Q.     Can you tell the Court a little about what**  
14     **Chile River does?**

15          A.     Chile River, we -- we farm some of our own  
16     property.   We have some rental properties.   We own a  
17     processing facility.   We process and market our  
18     onions.

19          **Q.     And where are your farms located?**

20          A.     We have some in the Hatch Valley, Las Uvas,  
21     and in Deming.

22          **Q.     Okay.   And are you affiliated with any local**  
23     **farm organizations?**

24          A.     Yes.   I am the president of the Southern Rio  
25     Grande Diversified Crop Farmers Association.



1           Q.    If I refer to the Southern Rio Grande  
2   Diversified Crop Farmers Association, as the diverse  
3   crop farmers, will you understand what I'm talking  
4   about?

5           A.    Yes.

6           Q.    Okay.  How long have you been with the  
7   Diversified Crop Farmers?

8           A.    We started the organization in 2009.  I have  
9   been the president ever since.

10          Q.    And what kinds of farmers compose the  
11   Diversified Crop Farming group?

12          A.    Row croppers, farmers that grow multiple  
13   different crops on their properties.

14          Q.    And how many members are in the Diversified  
15   Crop Farming Group?

16          A.    I'm not sure how many members we have now.  
17   At one time we had over 400 members.

18          Q.    Okay.  The Diversified Crop Farmers are an  
19   amicus in this case, correct?

20          A.    Yes.

21          Q.    Why is that?

22          A.    We have a lot at stake in this lawsuit.  We  
23   are, you know, becoming more reliant on groundwater.  
24   We have -- you know, EBID is supporting, you know,  
25   their operating agreement, and we wanted to support

1 the State of New Mexico in any way that we could to  
2 protect all of our waters in New Mexico. You know, we  
3 -- we felt that we've paid our fair share for the  
4 Project. We wanted to make sure we got our fair share  
5 of water.

6 **Q. Okay. Turning now to your own farming**  
7 **experience, how did you get started farming?**

8 A. I am a fourth-generation farmer so I grew up  
9 on the farm. I started working on the farm at a very  
10 young age helping the family chop cotton, mow weeds.  
11 As I got older, my responsibilities grew from tractor  
12 driver to irrigator, managing people, helping with the  
13 harvest of the crops in the packing facility,  
14 shipping, eventually doing some sales and  
15 transportation to ownership.

16 **Q. When you started farming, were you originally**  
17 **helping your dad on the farm?**

18 A. Yes.

19 **Q. What time period was that?**

20 A. The late '70s, early '80s.

21 **Q. And how old were you then?**

22 A. Seven to ten years old.

23 **Q. How many years have you been farming now?**

24 A. About 40 years.

25 **Q. Going back to what your dad was growing, what**

1 crops was your dad growing back during that time  
2 period?

3 A. He grew onions, chile, corn, alfalfa, cotton,  
4 cabbage, lettuce, wheat.

5 Q. Do you recall if your dad used ground and  
6 surface water to irrigate?

7 A. Yes. He used both.

8 Q. Okay. And do you know how many groundwater  
9 wells your dad had?

10 A. You know what, I'm not sure how many  
11 groundwater wells he had because it varied from year  
12 to year, depending on, you know, how many rental  
13 properties he had, but every farm that he did farm did  
14 have a well on it.

15 Q. Okay. Do you know when those wells were  
16 drilled by chance?

17 A. I don't have the priority dates on those  
18 wells, but I'm sure that they were all drilled in the  
19 '50s and '60s.

20 Q. And so were those wells drilled before you  
21 started working on the farm?

22 A. Yes.

23 Q. Are you using any of those farms still today?

24 A. Yes.

25 Q. Okay. And you mentioned you were a

1 fourth-generation farmer. Did your grandfather farm,  
2 as well?

3 A. Yes.

4 Q. Okay. Where did he farm?

5 A. He farmed in the Hatch Valley.

6 Q. Are you still farming some of that same land  
7 today?

8 A. Yes.

9 Q. Okay. What crops did your grandfather grow?

10 A. He grew the similar crops we grow today,  
11 alfalfa, onions, chile, lettuce, cabbage, wheat, corn,  
12 alfalfa.

13 Q. And did your grandfather use surface and  
14 groundwater to irrigate?

15 A. Yes.

16 Q. Do any of your children work with you on the  
17 farm today?

18 A. Yes. I have my oldest son helps manage the  
19 farms. My wife manages my process -- onion processing  
20 facility, and my daughter, she's still in high school,  
21 but she assists my wife in the summertime with the  
22 harvest of our onion crop.

23 Q. So is it safe to say that Chile River is a  
24 family-run business and operation?

25 A. It is a family-run business.

1           **Q.    Okay.  Turning to your operations, what point**  
2           **did you start your own farming operation?**

3           A.    I went to college for a couple -- for two  
4           years, decided that wasn't for me.  I came back to the  
5           farm in 1995 and started farming on my own.

6           **Q.    How many acres did you start with?**

7           A.    I started with about 50 acres.  I grew cotton  
8           and some onions.

9           **Q.    And how many acres are you growing now?**

10          A.    I farm approximately 2,000 acres.

11          **Q.    And do you own all 2,000 acres?**

12          A.    No.  I -- I own approximately 1,200 acres,  
13          and I rent about 800 acres.

14          **Q.    Can you describe how your arrangement works**  
15          **for the land that you are renting?**

16          A.    It varies from, you know, landlord to  
17          landlord, but in the Lower Rio Grande properties that  
18          I rent, I have a rental agreement.  I paid for the  
19          rent up front.  The landlord pays for the EBID  
20          assessment and any repairs or maintenance to the  
21          wells.  I pay for all energy costs associated with  
22          pumping of groundwater.

23          **Q.    Are all of the 2,000 acres that you farm**  
24          **located in the Hatch Valley?**

25          A.    No.

1           **Q.     Where are your other farms located?**

2           A.     I farm about 800 acres in the Hatch Valley.  
3     I own about 500 of those and rent the other 300 and  
4     then I farm in Las Uvas Valley and in Deming.

5           **Q.     Okay.   So let's start with the acreage you're**  
6     **farming in the Hatch Valley.   Can we pull up New**  
7     **Mexico Demonstrative Exhibit 1?   All right.   Click on**  
8     **the EBID area, the Garcia Field.   Can you see the**  
9     **outlined property in this image?**

10          A.     Yes.

11          **Q.     Do you recognize the outlined property in**  
12     **this image?**

13          A.     Yes.   This is a farm that I have in the Hatch  
14     Valley that we call the Garcia Farm.

15          **Q.     Okay.   And we can take that down and let's go**  
16     **to New Mexico Demonstrative Exhibit 23.   Mr. Franzoy,**  
17     **do you recognize this document?**

18          A.     Yes.   This is the same farm.   This is a crop  
19     map that I generated out of a farm program that I  
20     have.

21          **Q.     And do you create a document like this for**  
22     **all of your fields?**

23          A.     Yes.

24          **Q.     All right.   And why is that?**

25          A.     We use it -- there's different applications

1 for this program, and we generate the farm maps for  
2 different reasons. Some of it's for our employees  
3 that we give them. Some of it's for -- we have to  
4 record what crops we grow with FSA, and then we use it  
5 for our rotation. It actually keeps records of what  
6 crops are grown on each field. We can pull it up  
7 from, you know, years past, what crops we had on a  
8 particular field.

9 **Q. Okay. How many farmable acres are on this**  
10 **tract?**

11 A. Approximately 250.

12 **Q. What crops are you growing on this property**  
13 **this year?**

14 A. This year, we had onions, Hatch chile, pima  
15 cotton, upland cotton, and pecan trees.

16 **Q. How much water per acre does each of these**  
17 **crops use?**

18 A. The water usage varies from field to field,  
19 year to year. You know, there's an approximate, like,  
20 green chile approximately uses 4 acre-feet. Onions  
21 about the same, about 4-acre feet. Cotton uses a  
22 little over 3 acre-feet, 3.2, and then my pecan trees  
23 are immature pecan trees and approximately 4  
24 acre-feet.

25 **Q. What is the growing season for each of these**

1 **crops?**

2 A. They're different. The chile, we planted the  
3 chile in March and harvested through October. The  
4 onions were planted last September, and we harvested  
5 them in June. The cotton was planted in late April  
6 and May, and we will harvest it -- we started  
7 harvesting some actually last week, and we will  
8 harvest probably until the middle of December. The  
9 pecan trees are four-year-old trees.

10 **Q. Does that mean they're not producing yet?**

11 A. No.

12 **Q. Okay. Are you growing any other crops that**  
13 **are not shown here?**

14 A. Yes. We grow alfalfa. We grow corn,  
15 watermelons, wheat, and some forage crops.

16 **Q. How much water per acre does each of those**  
17 **crops use?**

18 A. Alfalfa, you know, we have some fields that  
19 are study soils that uses over 6 acre-feet, but  
20 typically around 5-and-a-half acre-feet. Watermelons  
21 use about 3-and-a-half acre-feet. Corn is about 4  
22 acre-feet. Wheat is about 3 acre-feet.

23 **Q. What is the growing season for those crops?**

24 A. Watermelons we plant in -- in May and harvest  
25 through September. Alfalfa is -- usually we'll --



1 established crop will last three years. We'll plant  
2 typically in the fall and then harvest it for three  
3 consecutive years after that. The corn is planted in  
4 late April and May and harvested in August and  
5 September.

6 **Q. Thank you. Mr. Franzoy, are you familiar**  
7 **with the term crop rotation?**

8 A. Yes.

9 **Q. Can you describe what crop rotation is?**

10 A. For my operation, what we try to do is we  
11 want to rotate to benefit what we call our cash crops,  
12 which is the vegetables like chile and onions. On  
13 this particular farm, for instance, we will plant one  
14 field in onions. We will follow that field the next  
15 year with hatch green chile, and after the chile,  
16 we'll farm it for three years with the rotational  
17 crop, and that varies from year to year depending on  
18 the prices of each crop, but for this year, we used  
19 cotton. Sometimes it's alfalfa or corn or some kind  
20 of forage crop or wheat even.

21 **Q. Do you have to rotate your crops?**

22 A. For vegetables, we do. It helps with disease  
23 pressure. These vegetables carry diseases, and we  
24 plant rotational crops that aren't carriers of that  
25 disease and try to eliminate that disease pressure

1 before we come back to that crop.

2 **Q. When you say disease pressure, can you**  
3 **describe what you mean?**

4 A. Well, you know, it depends on each crop.  
5 Like onions have a root disease called pink root, and  
6 if you plant onions back to back, year after year, the  
7 disease effects the roots where it will not produce  
8 marketable crop. The chile has diseases like  
9 phytophthora or Verticillium that will kill --  
10 actually kill the plant, so we have to rotate so that  
11 we can eliminate this disease pressure.

12 **Q. Are there any other benefits to rotating your**  
13 **crops?**

14 A. Yes. You know, some of the weeds that can  
15 carry the disease so we do plant some crops that are  
16 herbicide resistant, and we could use those to clean  
17 up the fields because the vegetables, you know, we  
18 can't spray herbicides on it so we want to eliminate  
19 as much weeds -- seed -- what we call seed bank in our  
20 soil as we can before we plant these expensive crops.  
21 Other benefits to it, you know, maybe salt management.  
22 We have recently started to leave some of these  
23 grounds fallow and use the surface water to leach the  
24 salts down below the root zone so we can produce  
25 higher quality, better-yielding vegetables.

1           **Q.     So how do you decide which crops to include**  
2 **in your rotation?**

3           A.     We do projections and cash flow.  It's all  
4 dependent on price, what we're going to get the best  
5 return on our investment.

6           **Q.     Okay.  And earlier, you mentioned the term**  
7 **fallowing.  What does fallowing mean?**

8           A.     Fallowing means that you will not plant a  
9 crop on a particular field or apply any water to that  
10 particular field.

11          **Q.     You did say that you fallowed portions of**  
12 **your land.  Why do you fallow?**

13          A.     Well, on mine, I don't plant a crop, but I do  
14 apply water.  I try to apply surface water and leach  
15 the salts.  The reason why I do that is because, you  
16 know, here recently with all the -- well, with the  
17 little amount of surface water that we get, we found  
18 it more cost effective to leave the land fallow than  
19 grow crop like wheat because wheat is grown in the  
20 wintertime, and you're applying salts with the  
21 groundwater so we found it more cost effective just to  
22 not plant anything and leach the salts.

23          **Q.     Okay.  Are there any crops that you grow**  
24 **every year?**

25          A.     Since we have an onion facility, we grow

1 onions every year. The demand for hatch chile is high  
2 so we grow green chile every year. Those are two  
3 crops that we do grow every year.

4 **Q. Generally, what percentage of your acreage is**  
5 **dedicated every year to those crops?**

6 A. We found that a five-year rotation is  
7 beneficial for controlling our diseases so about 20  
8 percent of our property is planted in chile and 20  
9 percent in onions.

10 **Q. How many pounds of chile and onions do you**  
11 **harvest on average each year?**

12 A. You know, I don't know. On chile, we harvest  
13 about 6,000, 7,000 tons of chile, and on -- on onions,  
14 we harvest about 700,000 50-pound bags.

15 **Q. What is the current market rate for chile and**  
16 **onions?**

17 A. You know, I don't know. On chile, all of our  
18 chile is contracted, and then the -- on the onions, it  
19 varies. It's dependent on supply and demand.

20 **Q. You also mentioned that you grow cotton. Do**  
21 **you know what the current market rate for cotton is?**

22 A. I don't know what it is currently today. I  
23 know cotton is at a record high right now, especially  
24 pima cotton, with the -- I think the last I heard, it  
25 was \$2.65 a pound.

1           **Q.    How has your crop mix changed over the last**  
2           **20 years?**

3           A.    It changes every year depending on what the  
4           -- you know, the prices are for these different crops.  
5           You know, it could be -- one year, it could be, you  
6           know, heavy alfalfa, the next year corn or cotton,  
7           but, you know, the chile and the onions stays pretty  
8           much the same, and over the last 20 years, I mean, it  
9           varies from year to year, but pretty much, it stayed  
10          the same.

11          **Q.    Is your crop -- is your crop mix influenced**  
12          **heavily by the market price?**

13          A.    Yes.

14          **Q.    Okay.   How does surface water allotments**  
15          **influence your crop mix?**

16          A.    It does have an affect.   I have, you know,  
17          certain farms that have, you know, over 2,000 TDS on  
18          the well water and so when we have a low, you know,  
19          small allotment of surface water, you know, we tend to  
20          avoid planting any onions on those pieces of property.

21          **Q.    Okay.   So using this property as an example,**  
22          **can you explain to the court how you would irrigate**  
23          **using surface water?**

24          A.    Using surface water, we have to, you know,  
25          pay our EBID assessment and then EBID makes -- you

1 know, has a meeting some time in the spring. They  
2 decide, you know, how much water we're going to get  
3 and when that release is going to be, and whenever  
4 they make those decisions and so we decide, you know,  
5 where we're going to utilize that, the water, you  
6 know, to benefit us the best, we will place a water  
7 order, and after a certain amount of time, EBID will  
8 deliver that water to our turnout. We have installed  
9 drip irrigation on this particular farm so we have a  
10 piping system that we open the canal water into and  
11 pressure that water up and irrigate through subsurface  
12 drip irrigation.

13 **Q. Can you describe how it is you would irrigate**  
14 **with groundwater?**

15 A. Groundwater is similar. I mean, we use the  
16 same piping system. The only difference is, is we  
17 don't use the canal, so we would shut the gate off to  
18 the canal and open valves from our different wells.  
19 In this farm, we have five different wells so we would  
20 divert all that water into the same irrigation system  
21 and irrigate.

22 **Q. Would you irrigate all of this tract at the**  
23 **same time or do you use different timings for it?**

24 A. No. We use different timings. We can only  
25 irrigate so much at a time.

1           **Q.     How much can you irrigate at one time?**

2           A.     You know what, it just depends. With the  
3 canal water, we can irrigate more because there's more  
4 -- a higher volume of water than our wells, so we can  
5 irrigate, like, five different valves at a time with  
6 canal water versus, you know, three to four with the  
7 wells.

8           **Q.     Is it faster to irrigate with surface water**  
9 **than it is to irrigate with groundwater?**

10          A.     Yes.

11          **Q.     How do you decide when to irrigate?**

12          A.     Mainly from experience. We do use, like, the  
13 soil probe, and we probe our soil. We check the soil  
14 content in the root zone of the crop.

15          **Q.     What months of the year do you use the most**  
16 **water?**

17          A.     We use it in the summer months, June, July,  
18 and August.

19          **Q.     And why is it you irrigate more in those**  
20 **summer months?**

21          A.     Because it's hotter at that time of year.  
22 The days are longer and our crops are more mature.  
23 They require more water.

24          **Q.     What happens to your crops if you don't**  
25 **provide them with enough water during those critical**

1 months?

2 A. They don't produce fruit, and they can  
3 actually abort fruit.

4 Q. How often do you need to irrigate during  
5 those summer months?

6 A. You know, it just depends. From crop to  
7 crop, soil type to soil type, onions, we water about  
8 every 72 hours. With the drip and green chile, we  
9 water about every 48 hours.

10 Q. How does a lack of water impact the crop?

11 A. Well, with -- you know, it varies from crop  
12 to crop. With green chile, it can affect the size of  
13 the PODs. Our -- the processors require a certain  
14 size, you know, to be processed that we have to meet  
15 that criteria. There is -- it can create what they  
16 call a blossom-end rot where there is deformation in  
17 the chile POD that becomes unmarkable. On the onions,  
18 it affects the size. You know, our customers require  
19 certain size to -- to be delivered. There is USDA  
20 standards for those sizes that we have to meet.

21 Q. Earlier, you mentioned that the soil will  
22 impact the amount you have to irrigate. How does this  
23 soil change the -- the amount that you need to use on  
24 your crop?

25 A. Well, the soil in the valley varies from -- I



1 mean, in the same field, it varies, but from field to  
2 field definitely, and the sandier soils don't hold as  
3 much water so they require, you know, a significant  
4 amount more than your clay soils or even your loam  
5 soils.

6 **Q. Generally, how does the total amount of water**  
7 **you use each year change from year to year?**

8 A. It varies somewhat due to climate. It could  
9 be, you know, the specific crops that I decide to  
10 plant for that year, but generally, you know, from  
11 year to year, it stays about the same. It averages  
12 about the same.

13 **Q. Mr. Franzoy, are you a member of EBID?**

14 A. Yes.

15 **Q. Okay. Do you get all of your surface water**  
16 **from EBID?**

17 A. Yes.

18 **Q. Can you describe how your arrangement with**  
19 **EBID works?**

20 A. I have -- on my farms, I have so many  
21 water-righted acres through EBID. I have to pay an  
22 assessment fee every year to EBID, and EBID is  
23 responsible for delivering that water to my head gate.

24 **Q. Okay. And does every farmer pay the same**  
25 **rate?**

1           A.     Yeah.   Every farmer pays the same rate.  
2   Every farmer gets the same amount of water.

3           Q.     All right.   How much did you pay per acre  
4   this year?

5           A.     \$90 an acre.

6           Q.     Does paying your EBID bill guarantee you any  
7   water?

8           A.     No.

9           Q.     Does EBID release water for your use year  
10  round?

11          A.     No.

12          Q.     When does EBID release water to farmers?

13          A.     It varies from year to year.

14          Q.     When did EBID release water to you this year?

15          A.     The first week of June.

16          Q.     Okay.   When did they stop releasing water for  
17  use for the farmers?

18          A.     The end of June, last week of June.

19          Q.     Okay.   Mr. Franzoy, are you familiar with the  
20  term full supply or a full allotment?

21          A.     Yes.

22          Q.     And what does that term full supply mean to  
23  you?

24          A.     A full supply is 3.024 acre-feet.

25          Q.     Okay.   How many inches is that?

1 A. 36.

2 Q. And does --

3 A. Or a little more than 36. Sorry.

4 Q. And how much surface water were you allotted  
5 per acre from EBID this year?

6 A. 4 inches.

7 Q. And what crops can you grow with 4 inches?

8 A. With 4 inches in a three-week --  
9 three-and-a-half week period, nothing.

10 Q. And so does that mean you have to supplement  
11 with groundwater?

12 A. Yes.

13 Q. Mr. Franzoy, does having more surface water  
14 available to you improve your crop yields?

15 A. Yes.

16 Q. Have you been more reliant on groundwater  
17 over the last 20 years?

18 A. Definitely, yes.

19 Q. Can you describe some of the costs associated  
20 with groundwater pumping?

21 A. Yes. We have had to do, you know, a lot of  
22 repair and maintenance on the wells. We've had to  
23 replace some wells. They deteriorate over a period of  
24 time. We have energy costs associated with pumping  
25 these wells. We've installed drip irrigation to help

1 better manage our salts in our water. We've done  
2 piping where we pipe and combine wells together to be  
3 more efficient with our irrigation. We have to apply  
4 amendments to our soil, such as sulfur and gypsum, to  
5 help leach our salts. We apply acids, specifically  
6 sulfuric acid, to our water to buffer our water to  
7 help move the salts away from our root zones.

8 **Q. Do your groundwater costs go down when you**  
9 **receive more surface water?**

10 A. They don't go down, but we use less  
11 groundwater, so our energy costs and maintenance costs  
12 does go down, yes.

13 **Q. All right. How many groundwater wells do you**  
14 **own in the Hatch Valley?**

15 A. I own 12.

16 **Q. And when was the last time you drilled a well**  
17 **in the Hatch Valley?**

18 A. 2015.

19 **Q. Was this a replacement well or a new well?**

20 A. Replacement well.

21 **Q. All right. And why would you have to replace**  
22 **the well?**

23 A. With the low water quality, it deteriorated  
24 the well casing, and the well collapsed.

25 **Q. How deep was the well that you drilled?**

1           A.     65 feet.

2           Q.     Okay. And how come you didn't drill that  
3 well any deeper?

4           A.     In the -- in the Hatch Valley, our aquifer is  
5 only 65 feet deep, but below that, it's, like, 12,  
6 1,500 feet, I heard, of clay, so it's a lot different  
7 than the Las Cruces Valley where -- so the aquifer is  
8 a lot deeper.

9           Q.     Have you drilled wells elsewhere?

10          A.     Yeah. I drilled a well on my farm in Las  
11 Uvas. We drilled a thousand feet.

12          Q.     All right. And how much did it cost you to  
13 drill that well?

14          A.     370,000.

15          Q.     How much did it cost you to drill the well in  
16 the Hatch Valley area?

17          A.     It was about 65,000.

18          Q.     So does the cost of the well depend on how  
19 deep you're drilling it?

20          A.     Yes.

21          Q.     If you couldn't afford to drill a well, would  
22 you have to rely on surface water alone?

23          A.     Yes.

24          Q.     Could you continue farming if you have to  
25 rely on surface water alone?

1           A.     No.

2           **Q.     Mr. Franzoy, are you familiar with the term**  
3 **water stacking?**

4           A.     Yes.

5           **Q.     What does that term mean to you?**

6           A.     To me, what it means specifically, talking  
7 about surface water, for instance, this year we didn't  
8 get our surface water until the first week of June.  
9 We had already harvested some of our crops, so we  
10 couldn't apply that surface water to those crops so we  
11 moved that water and applied it to another crop or we  
12 used it to leach salts on some fields.

13          **Q.     Do you stack water rights for any other**  
14 **reason?**

15          A.     We -- you know, we may stack water rights  
16 because we want to apply the higher-quality water to  
17 our higher-value crops like chile and onions, and, you  
18 know, instead of using the wells that are high in salt  
19 to, you know, so we can produce, you know,  
20 higher-yielding, better-quality crop with the higher  
21 value.

22          **Q.     So do your chile and onions prefer surface**  
23 **water to groundwater?**

24          A.     Definitely.

25          **Q.     And why is that?**

1       A.    Well, it just -- it's really low in salts.  
2   It helps with -- the salts tie up nutrient uptake.  
3   They also tie up water uptake so the crops, you know,  
4   produce a lot better crops with surface water.  We  
5   actually apply less fertilizers when we do use surface  
6   water.

7       **Q.    Okay.  And, Mr. Franzoy, do you measure your**  
8   **water quality?**

9       A.    From time to time, yes, I do.

10      **Q.    How do you measure the quality of your**  
11   **groundwater and surface water?**

12      A.    I hire a consultant and he takes a sample and  
13   he sends the sample off to a laboratory in Phoenix,  
14   Arizona.

15      **Q.    And do you test for total dissolved solids?**

16      A.    Yes.

17      **Q.    And what kinds of measurements do you get for**  
18   **your total dissolved solids in your groundwater?**

19      A.    You know what, it varies from well to well.  
20   Specifically, you know, the further you get away from  
21   the river, your salts are higher, but, you know, it's  
22   anywhere from 1,700 to 2,700 on my farms.

23      **Q.    And are you still able to farm those lands**  
24   **using that level of salinity in your groundwater?**

25      A.    We are.  We have to -- you know, installing

1 the drip irrigation has really helped, you know,  
2 manage it, and then it helps to apply, you know, the  
3 amendments better and move the salts away from the  
4 root zone by leaching. You know, we're able to do  
5 that. I mean, it does, you know, affect our yields.  
6 Our yields aren't as good as where we don't have the  
7 high salts, but we are able to do it.

8 **Q. All right. And can you describe, you know,**  
9 **how the drip irrigation system helps you manage the**  
10 **salinity?**

11 A. Yes. We -- we apply the drip tape subsurface  
12 below the root zone, and by applying our water in that  
13 area and applying and buffering that water with acid,  
14 we're able to move the salts away from the root zone.

15 **Q. And you mentioned the term leaching. Can you**  
16 **describe what leaching is?**

17 A. What we do with leaching is we actually apply  
18 the water flood irrigated large amounts of water and  
19 flood it and try to push the salts below the root  
20 zone.

21 **Q. If you don't apply any of the soil amendments**  
22 **or if you don't leach or you don't use your drip**  
23 **irrigation, can you describe the impact salinity will**  
24 **have on your crops?**

25 A. It impacts them, hurts the quality of the



1 fruit, the size of the fruit, yield, chile. You know,  
2 we have to meet certain requirements for POD size and,  
3 you know, the POD length and color and different  
4 things. You know, the high salinity does affect water  
5 uptake of the plant so we do end up with some blossom  
6 end rot and aborting fruit. The onions, it affects  
7 the size of onions. We do have a quality issue with  
8 that because if you do have high salts, it could stain  
9 the leaves on the onion skins, and that staining is  
10 actually a defect according to USDA, so we won't be  
11 able to market that onion as a U.S. No. 1. We have to  
12 sell it at a discount as a commercial grade.

13 **Q. So does the salinity impact the price you can**  
14 **sell your crops for?**

15 A. Yes.

16 **Q. All right. And roughly how much do you spend**  
17 **on soil amendments every year?**

18 A. It varies from field to field, farm to farm.  
19 I don't have a specific number for, you know, the  
20 total number.

21 **Q. Are those expenses a regular part of your**  
22 **farming operations?**

23 A. They are. They have been. You know, they've  
24 increased, you know, every year, and, you know, with  
25 the amount of groundwater that we're having to use,

1 it's been more and more every year.

2 **Q. All right. How much have you invested in**  
3 **drip irrigation?**

4 A. It varies from -- from, you know, farm to  
5 farm, depending on the design and the layout, but we  
6 spent anywhere from 2,500 to \$3,000 an acre.

7 **Q. Do you grow any crops that reduce the**  
8 **salinity of your soils?**

9 A. You know, we -- you know, we tried, you know,  
10 forage crops, they do remove salts from your soil.  
11 What we found that, you know, most of these forage  
12 crops, you know, with the low amount of surface water  
13 we're getting, we're actually applying more salts than  
14 what we're removing so we've kind of started leaning a  
15 little more towards, you know, more fallowing and less  
16 of forage crops until we can get some more surface  
17 water.

18 **Q. Turning now to your water permits, do you**  
19 **need a permit to use groundwater?**

20 A. Yes.

21 **Q. What kind of permit do you need to use**  
22 **groundwater?**

23 A. We have to have a permit with Office of the  
24 State Engineer.

25 **Q. Can you describe how your permit with the**

1 **Office of the State Engineer works?**

2 A. Yes. We have to own a water right, and you  
3 have to, you know, apply for a permit to, you know, if  
4 you need to drill a well, you have to apply for a  
5 permit and, you know, pay for a permit. I -- you have  
6 to submit advertisement in a local newspaper. I can't  
7 remember the amount of time. It's, like, three or  
8 four weeks it has to be running in a newspaper ad, and  
9 then you have a certain amount of time after that,  
10 that anybody could protest that water right and then  
11 the state engineer has to approve it.

12 **Q. Do you have a cap or a limit on the amount of**  
13 **water you can use each year?**

14 A. Yes.

15 **Q. What is your current cap or limit?**

16 A. Well, we have water meters on all of our  
17 wells, and with the EBID allotment, we, you know,  
18 subtracting the EBID allotment, I guess with the EBID  
19 allotment and the groundwater combined, we can only  
20 use 5-and-a-half acre-feet of water.

21 **Q. Do you have to use all of your surface water**  
22 **each year?**

23 A. Yes. You have to use your surface water.

24 **Q. Okay. Are there any other rules that you**  
25 **have to follow under your permit?**

1           A.    Yes.  We have to have every one of our wells  
2 metered.  We have to submit meter readings on a  
3 quarterly basis to the Office of the State Engineer.

4           Q.    Mr. Franzoy, have you ever used more water  
5 than you were allowed to?

6           A.    Yes.

7           Q.    Let's see.  Can we pull up New Mexico Exhibit  
8 791?  Mr. Franzoy, I'm showing you what's been marked  
9 as New Mexico Exhibit 791.  Do you recognize this  
10 document?

11          A.    Yes.

12          Q.    Do you see the date of this document?

13          A.    Yeah.  July 8, 2013.

14          Q.    And what is this document?

15          A.    This was a letter that I received from the  
16 Office of the State Engineer stating that I had over  
17 diverted on a 14-acre piece of property that I rented.

18          Q.    And what actions did you take when you  
19 received this letter from the Office of the State  
20 Engineer?

21          A.    I called the state engineer.  I talked to  
22 Ryan Serrano to see what I needed to do to become  
23 compliant.

24          Q.    How did Mr. Serrano help you get into  
25 compliance?

1       A.    This particular farm was an oversight of  
2 mine. I did not include it into my OWMAN and so Ryan  
3 assisted me in updating my OWMAN.

4       **Q.    All right. And what is an OWMAN?**

5       A.    It's an operating management tool that was  
6 part of the 101 settlement in the state adjudication  
7 court, and it allows us to put, you know, multiple  
8 farms together under one umbrella, as long as we don't  
9 divert more water than our allotment is.

10       **Q.    Have you diverted -- over diverted since**  
11 **2013?**

12       A.    No.

13       **Q.    What are some of the benefits of that OWMAN**  
14 **program you had mentioned?**

15       A.    Well, in my operation, you know, we farm a  
16 lot of different properties. Some of them are really  
17 small tracts. And what we like to do is plant our  
18 crops in larger areas to make it more efficient to  
19 manage so it allows us to manage all of our farms as,  
20 like, one farm, and we could -- you know, we have some  
21 farms that are adjacent to each other, and we can  
22 utilize our wells to -- together to, you know, more  
23 efficiently irrigate our farms with the bigger supply  
24 of water. We can move across the fields faster and  
25 more efficiently.

1           Q.     Okay. Earlier, you mentioned that your  
2 permit required you to meter your wells.

3                   MR. OGAZ: Can we pull up New Mexico  
4 Exhibit 673?

5           Q.     (BY MR. OGAZ) Mr. Franzoy, do you recognize  
6 this document?

7           A.     Yes.

8           Q.     What is the date of that document?

9           A.     December 18th, 2019.

10          Q.     And do you recall receiving this document?

11          A.     Yes.

12          Q.     What is this document?

13          A.     This was a -- a document that I received from  
14 the state engineer stating that one of my meters was  
15 not functioning properly.

16          Q.     Okay. And what did you do when you received  
17 this document from the state engineer?

18          A.     I contacted the state engineer's office. I  
19 talked to Ryan Serrano on what -- you know, what  
20 actions I needed to take to become compliant.

21          Q.     And what actions did you take to become  
22 compliant?

23          A.     We removed the meter, and we took it to a  
24 shop and got it repaired and reinstalled the meter and  
25 then I contacted Ryan, let him know that that was

1 done, and I believe they sent their field techs out to  
2 check it and, you know, I haven't heard from them  
3 since so I'm assuming I'm in compliance.

4 Q. Are all of your -- are all of your wells  
5 metered now?

6 A. Yes, they are.

7 Q. Okay. And do you know if all other farmers  
8 in the Hatch Valley area also have to have their wells  
9 metered?

10 A. Yeah. Everybody in the LRG has to have their  
11 wells metered.

12 Q. And how often do you report your meter  
13 readings?

14 A. Quarterly.

15 Q. Okay. Changing topics.

16 JUDGE MELLOY: Mr. Ogaz, if we're going  
17 to change topics, we took a fairly decent break  
18 between witnesses, but I do think we need to take at  
19 least a short break at this point. Let's break until  
20 3:45, and we'll come back then and continue with the  
21 testimony.

22 (Recess.)

23 JUDGE MELLOY: While we're waiting for  
24 him to get on, let me just mention a couple things.  
25 For some reason, the quality of the video from your

1 witness room is not as good as the quality of the  
2 video from any of the other locations, and I don't  
3 know if you can take a -- have somebody take a look at  
4 that. Fortunately, I don't have any trouble with the  
5 audio. The audio is very clear, but if you could have  
6 somebody take a look at that, it can sometimes get  
7 pretty fuzzy.

8           The other thing I would mention is that  
9 we at certain times of the day have some bandwidth  
10 problems in the building. We're trying to get our  
11 bandwidth increased, but, again, I don't have any  
12 trouble with audio, and I can still see the people,  
13 but the sharpness of the video is not always great  
14 when we start having bandwidth problems. So if  
15 anybody -- you know, I think when we originally set  
16 the ground rules for this, we indicated that the four  
17 parties and the witness and myself would be on screen.  
18 If any of the parties who aren't participating want to  
19 -- want to turn off their video, I have no objection  
20 to that. I know, you know, Mr. Hartman, if you want  
21 to listen and not have your video on, I'm not saying  
22 you have to, but -- or any of the other parties for  
23 that matter, feel free to turn off your video and just  
24 come back on when you actually have to participate.  
25 It might be a little difficult if you think you're



1 going to be making objections, but if you're just  
2 basically observing and you want to turn off the  
3 video, feel free to do so.

4 All right. We're ready to go. Go  
5 ahead, Mr. Ogaz.

6 MR. OGAZ: Thank you, Your Honor.

7 Q. (BY MR. OGAZ) Mr. Franzoy, can you hear me?

8 A. Yes.

9 Q. Okay. So I only have a few more questions  
10 for you, Mr. Franzoy. Are you aware of the 2008  
11 operating agreement between EBID, EP1, and the Bureau  
12 of Reclamation?

13 A. Yes.

14 Q. Did EBID hold any meetings for farmers before  
15 the 2008 operating agreement was signed?

16 MR. DEITCHMAN: Objection; cumulative.  
17 We heard this testimony this morning.

18 MR. OGAZ: From who?

19 MR. DEITCHMAN: Mr. Salopek.

20 MR. OGAZ: Again, this is -- sorry, Your  
21 Honor. Go ahead.

22 JUDGE MELLOY: Well, we have heard this  
23 testimony before. Some of it is starting to get  
24 pretty cumulative, but I'll let the witness answer.

25 MR. OGAZ: Okay.

1           A.     Can you repeat the question?

2           Q.     (BY MR. OGAZ) Did EBID hold any meetings for  
3 farmers before the 2008 Operating Agreement went into  
4 effect?

5           A.     No.

6           Q.     Did you attend any of those meetings?

7           A.     No.

8           Q.     And did the -- did EBID hold any meetings for  
9 farmers after the 2008 Operating Agreement was signed?

10          A.     I believe so.

11          Q.     And what was your understanding of the  
12 operating agreement after attending those meetings?

13          A.     That it was an agreement between EBID and EP  
14 No. 1 to settle a lawsuit. It was going to allow us  
15 to continue pumping and was going to, you know, end  
16 all future -- future lawsuits.

17          Q.     And how has your understanding changed?

18          A.     Well, I'm sitting here in a lawsuit with  
19 Texas versus New Mexico. You know, they are disputing  
20 my ability to use groundwater.

21          Q.     Were the Diversified Crop Farmers consulted  
22 before the operating agreement was signed?

23          A.     No.

24          Q.     Have you noticed any changes in water  
25 availability since the operating agreement was signed?

1           A.    Yes.  We are getting less and less surface  
2 water and having to rely more and more on groundwater.

3           **Q.    Have you noticed any increases in salinity**  
4 **loads in your groundwater?**

5           A.    Yes.

6           **Q.    How has the salinity loads changed?**

7           A.    Well, with using more groundwater, we're  
8 actually applying more salts to our soils.

9           **Q.    Have you had to use more soil amendments now**  
10 **than when the operating agreement was signed?**

11          A.    Yes.

12          **Q.    And why is that?**

13          A.    We use different soil amendments to help  
14 leach our salts away from our root zones and below  
15 them.

16          **Q.    If you were unable to use groundwater, how**  
17 **would that impact the number of acres you farm each**  
18 **year?**

19          A.    Well, this year, I wouldn't farm any acres in  
20 the Hatch Valley.

21          **Q.    Mr. Franzoy, how many people do you employ on**  
22 **your farm?**

23          A.    I have around 35 full-time employees.  I hire  
24 about 150 employees seasonal to help harvest the crop  
25 in the fields.  I hire another 65 seasonal employees

1 at my onion facility to help sort, package, and ship  
2 onions.

3 Q. Earlier, you said you also process crops.  
4 What crops do you process?

5 A. I process onions.

6 Q. Do you process any other crops?

7 A. No.

8 Q. How many employees do you have at your  
9 processing plant?

10 A. 65 part-time, and 5 full-time.

11 Q. And where do you hire your employees from?

12 A. We try to hire locals, as many as we can. We  
13 have to supplement that with guest workers from  
14 Mexico.

15 Q. And can you describe some of the activities  
16 you have your workers do on the farm?

17 A. Yes. We have our full-time employees do  
18 irrigations, tractor driving, repairing irrigation  
19 systems, you know, we have mechanics. We have office  
20 staff, you know, I have an accountant, other office  
21 personnel. We have people that help pull the weeds  
22 out of the fields, harvest onions and chile. It's all  
23 done by hand so we, you know, use people to harvest  
24 those crops and then, you know, at the onion facility,  
25 we use them to, you know, drive forklifts, sort

1 onions, manage equipment, you know, do inventory  
2 management and, you know, forklift, shipping, and  
3 such.

4 **Q. Mr. Franzoy, if you were to have to cut back**  
5 **on the number of acres you farmed, how would that**  
6 **impact your processing operations?**

7 A. It would have a severe impact. I mean, we --  
8 we -- you know, our facility is, you know, very  
9 expensive to run so, you know, we'd have to, you know,  
10 cut back on, you know, how many onions that we  
11 package, and it would make it difficult, you know, for  
12 us to meet our obligations with our bank on the money  
13 that we borrowed to, you know, build a facility and  
14 purchase the equipment.

15 **Q. Would you also have to cut back on the number**  
16 **of employees you hire?**

17 A. Yes. Definitely.

18 **MR. OGAZ:** Thank you, Mr. Franzoy. I  
19 know that this is your busy season so I appreciate you  
20 taking the time out of your day today.

21 I have no further questions, Your Honor.

22 **JUDGE MELLOY:** Mr. Deitchman, are you  
23 going to go first?

24 **MR. DEITCHMAN:** Mr. Dubois is going to  
25 go first.

1 JUDGE MELLODY: Mr. Dubois?

2 MR. DUBOIS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DUBOIS:

5 Q. Mr. Franzoy, my name is James Dubois, and I'm  
6 an attorney with the Department of Justice  
7 representing the United States in this case. I  
8 understand from your testimony, you have about 800  
9 acres in the Hatch Valley; is that right?

10 A. Yes.

11 Q. And another 1,200 in the Mesilla Valley?

12 A. No. I have about 320 in Las Uvas Valley.  
13 It's out of the LRG, and then I have another 900 in  
14 Deming, this is also out of the LRG.

15 Q. Okay. So the rest of the acreage is not  
16 within the LRG. All right. And all of the 800 acres  
17 you have in the Hatch Valley, are they all within  
18 EBID?

19 A. No. I believe I have roughly 20 acres that's  
20 not in the EBID boundary.

21 Q. Are those irrigated acres?

22 A. Yes.

23 Q. So you've got about, call it, 780 acres  
24 within EBID; is that right?

25 A. Yeah, roughly.

1           Q.    Okay. With respect to the land in EBID, your  
2 operation is entitled to whatever the EBID allocation  
3 is for that year times roughly times 780 acres; is  
4 that right?

5           A.    As far as surface water and --

6           Q.    Yes. As far as surface water?

7           A.    Yes.

8           Q.    Okay. And can the surface water get to all  
9 of your acres located in the Hatch Valley?

10          A.    That's within EBID boundary, yes.

11          Q.    Okay. And you can stack the surface water on  
12 your EBID acres; is that right?

13          A.    Yes.

14          Q.    And my understanding is the limitation on  
15 stacking within EBID is you can only double the  
16 surface water on a given acre, so if you've got 400  
17 acres of irrigation -- of irrigated EBID water, you  
18 could double that on 200, but you can't take the  
19 entire 400 and put it on 100, right?

20          A.    I'm not sure I understand. I'm -- I know  
21 that we can -- I could put -- if I wanted to, I could  
22 put 400 on one acre if I wanted to.

23          Q.    Under EBID's rules of the surface water?

24          A.    I believe so.

25          Q.    Okay.

1           A.    As long as I don't go over my total allotted  
2 water that -- you know, for all my properties.

3           Q.    All right. And you're not entitled to  
4 deliver the surface water from EBID to those 20 acres  
5 that are outside the boundary, right?

6           A.    No.

7           Q.    So we can agree that groundwater is the only  
8 irrigation source to the land located outside EBID,  
9 right?

10          A.    Correct.

11          Q.    Do you lease or own any land in the Mesilla  
12 Basin?

13          A.    Yes. Excuse me. I'm sorry. I don't lease  
14 or own any in the Mesilla Basin. All of my property  
15 is in the Rincon.

16          Q.    Okay. That's what I was trying to get  
17 cleared up, so thank you. All right. So all of your  
18 testimony here today has been about your land in the  
19 Rincon or Hatch Valley because the other pieces of  
20 land you talked about within your 2,000 acres are  
21 outside of EBID and outside of -- and outside of the  
22 -- both the Rincon and Mesilla Basins?

23          A.    Correct.

24          Q.    All right. Thank you. How many wells do you  
25 have that are located on your irrigated land in -- in



1 the -- can I use the Hatch Valley and the Rincon  
2 Valley interchangeably for purposes of talking with  
3 you today because I -- I think of it as -- I think of  
4 it in the area you're in as the Hatch Valley, and I  
5 know that it's -- technically it's the Rincon Valley,  
6 but if I -- if I use Hatch, can we just agree that  
7 we're talking about the area in the Rincon Valley?

8 A. Yes.

9 Q. Thank you. So how many wells do you have  
10 that are located on your irrigated land in the Hatch  
11 Valley?

12 A. 12.

13 Q. And as I understand it, all of those are --  
14 are piped together; is that correct?

15 A. No, they're not. I have specific farms that  
16 they're piped together. I have some farms that are  
17 adjacent to each other that --

18 Q. Okay.

19 A. -- are piped together, but not all of them  
20 are -- you know, they're not all combined together,  
21 no.

22 Q. Okay. When were the wells located in the  
23 Hatch Valley drilled? I know you talked about the  
24 last one being drilled in 2015. When were the others  
25 drilled?

1           A.    I don't have that information.

2           **Q.    Okay.  Is maintain -- excuse me.  Is**  
3 **maintenance of your wells a regular part of the**  
4 **operation of irrigating with wells?**

5           A.    Can you repeat that again, please?

6           **Q.    Sure.  Is maintenance of your wells a regular**  
7 **part of the operation of the irrigation operation with**  
8 **wells?**

9           A.    Yes, it is.

10          **Q.    Okay.  So you've always had to do regular**  
11 **maintenance on those wells?**

12          A.    Yes.  We've -- in the -- you know, like in  
13 the past when we would get a full allotment, you know,  
14 we didn't have to utilize all the wells at one time.  
15 It kind of was dependent on, you know, the quantity of  
16 surface water that we received and, you know, here  
17 recently, I mean, we've had to rely on all the wells  
18 and have all the wells in working order in order to be  
19 able to, you know, supply our crops with the water  
20 that they needed.

21          **Q.    Were you doing regular maintenance on the**  
22 **wells prior to 2008?**

23          A.    Not as -- not as frequent because we didn't  
24 run them as much so they didn't require as much  
25 maintenance as they do now.

1           Q.    How deep is the aquifer under your ground in  
2   the Hatch Valley?

3           A.    It varies, you know, throughout the valley,  
4   but in general, that's around 60 to 70 feet.

5           Q.    Does that refer to the uniform depth or  
6   thickness under your land?

7           A.    The water?

8           Q.    Uh-huh.  The depth -- the thickness of the  
9   aquifer, the water-bearing part of the aquifer?

10          A.    Yeah, it's pretty close.  Varies from -- I  
11   have some that's 57 feet and some, like, 70 feet so,  
12   you know, it kind of varies within that on my farms  
13   within that depth.

14          Q.    Does the thickness in the aquifer at  
15   individual well sites affect the well performance?

16               MR. OGAZ:  Objection; foundation.

17               MR. DUBOIS:  They're his wells.

18               JUDGE MELLOY:  He's talking about his  
19   wells.  Go ahead.

20          A.    Can you repeat the question?

21          Q.    (BY MR. DUBOIS)  I can.  Does the thickness of  
22   the aquifer at individual well sites affect the well  
23   performance?

24          A.    No.  I think it's more of -- more of what's,  
25   you know, below the well, you know, the foundation,

1 you know, what kind of groundwater rocks it has below  
2 it more than a depth.

3 Q. Does the depth of the -- the thickness of the  
4 aquifer affect the water quality in the wells?

5 A. You know that, I'm not sure.

6 Q. Okay. Does the -- and I think you've --

7 JUDGE MELLODY: Let me just ask,  
8 Mr. Dubois, let me make sure I understand what you're  
9 asking about here. When you say "thickness," are you  
10 talking about there's a depth of ground until you get  
11 to the aquifer and then are you talking about from  
12 that point I recall at the top of the aquifer to the  
13 bottom of the aquifer? Is that what you mean by  
14 thickness?

15 MR. DUBOIS: Saturated thickness is  
16 basically, you know, a more technical term might be  
17 saturated thickness. The -- the -- let me -- let me  
18 -- let me ask a couple of questions to -- to help  
19 frame it for you a little bit, Your Honor.

20 Q. (BY MR. DUBOIS) Mr. Franzoy, you said that  
21 the -- the thickness of your -- the depth of your  
22 wells is basically 60 to 70 feet underlying most of  
23 your land; is that correct?

24 A. Yes.

25 Q. And below that, there is a -- a rather thick

1 clay layer, isn't there?

2 A. Yes.

3 Q. Okay. So when we're talking about depth of  
4 the well, we're talking about the -- the depth of the  
5 sediments above that clay layer, are we -- is that how  
6 you're referring to it?

7 A. Yes. From the surface --

8 Q. Okay.

9 A. -- of the ground to the bottom of the  
10 aquifer, yes.

11 Q. Okay. Yes, that's -- so we're talking about  
12 the same thing. I just want to make sure that the  
13 judge is -- is following our conversation. Thanks.

14 You -- you were talking about the water  
15 quality in your wells earlier, and you -- you -- I  
16 believe you said that the water quality varies from  
17 1,700 to 2,700 parts per million TDS; is that correct?

18 A. Yes.

19 Q. So the minimum TDS in any of your wells is  
20 1,700 parts per million?

21 A. Yes.

22 Q. Okay. And you said you had permits for all  
23 the wells, right?

24 A. Yes.

25 Q. And all those wells allow you to take -- do

1 all -- are all those wells permitted to take 5.5  
2 acre-feet per acre?

3 A. All the wells that -- that I own, yes. I do  
4 have some rental properties that, you know, may be at  
5 4-and-a-half acre-feet, but I believe -- I believe I'm  
6 not renting those anymore. I think everything that I  
7 rent and own now is at 5-and-a-half acre-feet.

8 Q. All right. And that means the combined  
9 volume between surface and groundwater is -- that's  
10 allowed to be withdrawn every year is 5.5 acre-feet,  
11 correct, per acre, excuse me?

12 A. Yes.

13 Q. Can the water from the wells be stacked on a  
14 smaller number of acres than the 800 acres?

15 A. As long as I don't go over my total  
16 allotment, yes.

17 Q. Okay. So the total allotment is roughly 800  
18 acres times 5.5?

19 A. Yes.

20 Q. So roughly 4,400 acre-feet. Okay. Is there  
21 any limit on the amount of groundwater that can be  
22 stacked on any one acre? Could you put the entire  
23 4,000 acre-feet of water on a hundred acres.

24 A. Yeah, you could.

25 Q. Okay. I just want to make sure I'm

1 understanding how the water can be used. So there's  
2 not a limitation of 5-and-a-half acre-feet being  
3 applied to any acre, it is a limit of 5-and-a-half  
4 acre-feet per each acre of -- of permitted irrigated  
5 ground?

6 A. Yes. I have a right to use 5-and-a-half  
7 acre-feet per acre.

8 Q. As I understand the testimony from earlier  
9 today from David Salopek -- sorry about that. I just  
10 blanked on his name for a second. I apologize -- the  
11 individual farmers had the opportunity to prove up the  
12 -- the difference between the 4-and-a-half acre-feet  
13 per acre and the 5-and-a-half acre-feet per acre as  
14 far as their -- what would be allotted under their  
15 permit; is that correct?

16 MR. OGAZ: Objection, Your Honor; beyond  
17 the scope of direct.

18 MR. DUBOIS: Actually, Your Honor, it's  
19 not because he's already testified he's got  
20 5-and-a-half acre-feet per acre and I'm trying to  
21 ascertain how that was developed.

22 JUDGE MELLOY: Go ahead.

23 Q. (BY MR. DUBOIS) Mr. Franzoy, to be entitled  
24 to take 5-and-a-half acre-feet per acre, you had to  
25 make proof of that use to the -- to the state; is that

1 correct?

2 A. Yes.

3 Q. Were you limited to the period of time in  
4 which that proof -- the -- the evidence would -- would  
5 be from? I mean, could you bring in proof that you  
6 were using 5-and-a-half acre-feet per acre starting in  
7 1990 or 2000?

8 A. I'm not sure I understand your question. Can  
9 you rephrase that?

10 Q. Sure. Did you -- in order to establish  
11 5-and-a-half acre-feet per acre, did you have to  
12 establish that you were using that amount prior to  
13 1980?

14 A. I don't believe that they gave us a specific  
15 date when we had to -- a specific year that we had to  
16 use. We just had to prove that -- you know, that we  
17 had used 5-and-a-half or more acre-feet.

18 Q. Okay. So it didn't -- it didn't have to be  
19 using 5-and-a-half before 1980, it just had to be  
20 using 5-and-a-half before the -- the time period that  
21 you were presenting that information to the state  
22 engineer?

23 A. I can't remember, you know, the year, but,  
24 yes, we had to prove that we did use 5-and-a-half  
25 acre-feet to be able to submit the proof.



1           Q.    Okay.  Do you use your wells in the Hatch  
2   Valley in -- in years in which you get a full  
3   allocation of 3 acre-feet per acre from EBID?

4           A.    I haven't received a full allocation in quite  
5   some time.  You know, as far as I can remember, back  
6   when we did receive a full allocation, back in the  
7   '90s, we used surface water all the time except for  
8   there was a short period of time between when they  
9   turned the water off or, you know, shut the system  
10  down -- down and opened it up that we used wells, and  
11  then there would be emergency cases when EBID couldn't  
12  deliver us the water, we would, you know, use the  
13  wells to supplement.

14          Q.    You pumped groundwater for irrigation prior  
15  to 2008, right?

16          A.    Yes.

17          Q.    And you pumped groundwater for irrigation in  
18  the 1990s, right?

19          A.    Yes.

20          Q.    We can agree that you pumped groundwater  
21  prior to the -- to the drought that started in about  
22  2002?

23          A.    Yes.

24          Q.    Okay.  I guess maybe there's a question  
25  there.  Can we agree that the -- that the -- that

1 we're currently in a drought?

2 A. You know, I don't -- it just depends on what  
3 the definition of a drought is. I know this year,  
4 this summer, we received quite a bit of, you know,  
5 rain than we have in a long time, so I don't know if  
6 that technically takes us out of the drought or not.

7 Q. Can we agree that the drought that -- that  
8 the Lower Rio Grande has been suffering started in  
9 about 2002?

10 A. Yes.

11 Q. All right. So beginning in about 2002 or  
12 2003, Project deliveries started to drop, right?

13 A. Yes.

14 Q. Okay. So it's fair to say that you had to --  
15 you had to rely more on groundwater since 2002,  
16 correct?

17 A. Yes.

18 Q. And you stated earlier today that you'd been  
19 using more groundwater in recent years, right?

20 A. Yes.

21 Q. Okay. And I think we can agree that we've  
22 been in -- that the Lower Rio Grande has been in a  
23 drought for the better part of 20 years, right?

24 A. Yes.

25 MR. OGAZ: Objection, Your Honor; asked

1 and answered.

2 Q. (BY MR. DUBOIS) And --

3 JUDGE MELLOY: Go ahead.

4 Q. (BY MR. DUBOIS) -- can we agree that you  
5 expect to use more groundwater during prolonged  
6 drought?

7 A. Yes.

8 Q. And how much of your increased production  
9 costs, your soil amendment, your pumping costs, how  
10 much of that is simply due to the drought that the  
11 basin has been in for the last 19 or 20 years?

12 MR. OGAZ: Objection; speculative.

13 MR. DUBOIS: This is testimony regarding  
14 the 2008 Operating Agreement, Mr. Ogaz, but let's ask  
15 -- I'm sorry, Your Honor.

16 JUDGE MELLOY: That's all right. You  
17 can go ahead and answer the question.

18 A. You know, there's been a significant cost of,  
19 you know, the inputs with -- you know, with the  
20 drought, of course.

21 Q. (BY MR. DUBOIS) Okay. Do you use the entire  
22 permitted amount of 5-and-a-half acre-feet per acre in  
23 most years for -- for -- unbalanced for your land?

24 A. No.

25 Q. What percentage of your permitted water do

1     you usually take each year?

2           A.     I'm not sure. I haven't -- I don't recall  
3     what the numbers are.

4           Q.     Okay. On average, do you know how many  
5     acre-feet of water you apply to your -- to your land  
6     in the Hatch Valley?

7           A.     I don't have that.

8           Q.     Okay. And as I understand it, chiles are  
9     more sensitive to extreme heat than crops like pecans;  
10    is that correct?

11          A.     I -- I don't know. I don't have a lot of  
12    expertise in pecans, so I wouldn't know the answer to  
13    that.

14          Q.     Okay. Do you have any pecans?

15          A.     I have some young trees, some four-year-old  
16    trees. I recently acquired in Deming a 20-acre  
17    orchard.

18          Q.     Okay. So they're not producing yet?

19          A.     The 20-acre orchard is producing. It was in  
20    poor condition when I purchased it, and it's finally,  
21    you know, coming in to good production this year.

22          Q.     Okay. All right. And as I understand it,  
23    you use mostly drip irrigation system in the Hatch  
24    Valley; is that correct?

25          A.     Yes. I do use some flood irrigation, also.

1           Q.    Okay.  When did you start shifting to drip  
2   irrigation?

3           A.    I started to --

4           Q.    I guess, when I say -- when I say "you," I  
5   mean the -- the Chile River Ranch operation.

6           A.    Sure.

7           Q.    Because I understand that your -- technically  
8   your dad was sort of the man in charge until the last  
9   decade or so.  So I'm sorry.  I asked you when you  
10  started converting to drip irrigation?

11          A.    We started experimenting with drip irrigation  
12  in 2005/2006.

13          Q.    Okay.  And about what percentage of your  
14  fields are in drip irrigation?

15          A.    Everything that we own is in drip irrigation,  
16  and we have some -- some drip irrigation in some  
17  rental property that we rent.

18          Q.    Okay.  Is labor your biggest expense on your  
19  farm ground?

20          A.    Yes.

21          Q.    As I understand it, there's been a problem  
22  with a shortage of labor over the last couple of  
23  years?

24          A.    Yes.

25          Q.    If you're short of labor, does that cause you

1 to lose -- can that cause you to lose part of your  
2 chile crop?

3 A. It can. We -- we're able to utilize the --  
4 what they call the H2A program. It's a guest worker  
5 program with Mexico so we're bringing guest workers  
6 across to assist with the harvest. So we were able  
7 to, you know, fix that issue with the labor shortage  
8 by bringing in the guest workers.

9 Q. But my understanding is, am I correct that  
10 chiles have to be picked by hand basically?

11 A. Yes. That is -- green chile. They do have  
12 mechanization for the red chile, and green chile,  
13 they're working on it, but they haven't perfected it  
14 yet.

15 Q. And onions, do onions have to be picked by  
16 hand?

17 A. Onions, most onions are mechanically  
18 harvested. The type of onion that we grow in our  
19 valley is a fresh sweeter onion that doesn't -- that's  
20 not as durable as some of the onions that you might be  
21 familiar with that are more of a long day storage type  
22 onion that are more durable and can be mechanical  
23 harvested.

24 Q. Okay. Now, are there any -- are there any  
25 drains that run through or around the edge of your

1 fields, near your fields?

2 A. Yes.

3 Q. Okay. Which one? Which drain or drains?

4 A. I think it's called the Salem drain. I'm not  
5 for sure. But that drain actually runs through --  
6 same drain runs through all of my farms.

7 Q. And does water sometimes flow in the drain?

8 A. Yes.

9 Q. And in his deposition, your dad said that  
10 when you turn on your wells, you see a change in the  
11 water levels in the drains. Would you agree with your  
12 dad on that?

13 A. Can you repeat that again, please?

14 Q. Yeah. In his deposition, your dad said that  
15 when you turn on your wells, you see -- he sees -- he  
16 saw a change in the water levels in the drains. Do  
17 you agree with your dad on that?

18 A. No, I don't. I haven't -- you know, I don't  
19 really pay attention. I never really watched the  
20 water levels in the drains when -- when I turn on my  
21 wells. I haven't witnessed that.

22 Q. All right. You testified a little bit about  
23 the OWMAN program, and I think that the Special Master  
24 understands the OWMAN program. I think I understand  
25 the OWMAN program now. I understand that the OWMAN

1 allows a farmer to -- who either owns or manages land  
2 to marshal all his water resources under essentially a  
3 single umbrella that's a -- a net for all of the farm  
4 ground; is that a fair summary?

5 A. Yes.

6 Q. Okay. And so -- so if you're an owner or  
7 manager of 800 acres and you can divert 4,400  
8 acre-feet of combined surface and groundwater, I guess  
9 it -- in your case, it'd be 5,500 acre -- no, 4,500.  
10 As long as your average for the entire amount of acres  
11 doesn't exceed that gross net number of acres times  
12 5.5, you are within -- you are -- you are protected  
13 from administration by the OWMAN program; is that  
14 correct?

15 A. As long as I don't over divert my water  
16 right, I am protected, yes.

17 Q. Okay. And if you have land -- and you may  
18 not know this. I don't know the answer to this one.  
19 If you have land in both the Rincon and the Mesilla  
20 Basin, can you put all of that land under the OWMAN  
21 program and then net between the two basins?

22 A. I believe so.

23 Q. Okay. Thank you. So you could -- you could  
24 lease some -- you could lease some land down, say, in  
25 Mesilla Valley that had groundwater rights, and you



1 would be able to -- to average those acres against  
2 your land in the -- in the Rincon -- in the Hatch  
3 Valley; is that correct?

4 A. Can you repeat that question?

5 Q. Probably not.

6 A. Well, you said -- you said groundwater  
7 rights, and, you know, I don't know --

8 Q. Let me rephrase the question and hopefully  
9 help both of us out. If you had -- let's say you had  
10 a hundred acres in the Mesilla Valley that had -- that  
11 had wells --

12 A. Okay.

13 Q. -- and you needed the water because you're  
14 over diverting your water in the Hatch Valley where  
15 you've got chile and alfalfa and -- and too many acres  
16 and it's a -- a year in which you -- you over divert.  
17 But if you've got that Mesilla Valley acreage under  
18 your OWMAN program, you can use that to -- as part of  
19 your averaging so that you can effectively swap the  
20 Mesilla Basin Valley -- the Mesilla Basin water into  
21 the Hatch Valley; is that correct?

22 A. You know, I don't know. I do -- everything  
23 that I farm is in the Hatch Valley, so I guess you  
24 could include farms from the Mesilla Valley in your  
25 OWMAN if you needed to, if you have farms in both

1 places.

2 Q. Okay. Now, I want to turn you to New Mexico  
3 Exhibit 791 that you were looking at earlier. And I  
4 believe you said that the -- that this related to a  
5 14-acre piece of property that you rented; is that  
6 right?

7 A. Yes.

8 Q. But it was not under your OWMAN program as it  
9 existed at the time of -- of this letter?

10 A. That is correct.

11 Q. Okay. So this is after OWMAN was in place,  
12 this 14 acres was simply not included in your -- in  
13 your OWMAN program?

14 A. Right. I overlooked it, and I did not add it  
15 to my OWMAN.

16 Q. Okay. And if this would have been under your  
17 -- your OWMAN program, is it -- is the OWMAN program,  
18 is it a permit? I mean, I'm -- we've been talking  
19 about it and Mr. Ogaz was talking about it and it's  
20 unclear to me exactly how that program is formalized  
21 so that the State knows what is in and out. What's  
22 the process for that?

23 A. We have to go to the state engineer's office  
24 and fill out all of the specific farms that are going  
25 to be part of our OWMAN with all of the LRG numbers,

1 including all of our, you know, allotments for each  
2 specific property and fill all of that out at the  
3 state engineer's office. And we have to have -- if  
4 we're going to put some rental property under there,  
5 we have to have permission from the landlords to do  
6 that.

7 Q. Okay. And is it -- does it take the form of  
8 -- of a permit or is it simply a -- a former program  
9 that is approved by the Office of State Engineer?

10 A. You know what, I'm not necessarily sure on  
11 that. I just know that I have to go in there and --  
12 and fill it out and get their permission. They have  
13 to okay that. So I guess it does have to be approved.

14 Q. Do you know anybody who's ever had a proposal  
15 denied by the State Engineer?

16 A. No.

17 Q. Okay. So if -- if back in -- in 2013, if  
18 this 14 acres would have been included within your  
19 OWMAN system, you would not have gotten this letter;  
20 is that correct?

21 A. That is correct.

22 Q. Okay. And if you exceed your diversion  
23 limits under the OWMAN system, would your water use be  
24 curtailed in the year you over divert?

25 A. Not in the year you over divert. I -- you

1 know, and I'm -- I think it's taken on the next year,  
2 and I believe it's two for one.

3 Q. And if you exceeded your diversion limits  
4 under the OWMAN system, would you expect to get  
5 another letter like the one in New Mexico 791  
6 requiring you to obtain additional water or credit?

7 A. Yes.

8 Q. Okay. And I think that -- that as you  
9 expressed it, Mr. Serrano helped you get in compliance  
10 after he sent you the letter from 2013; is that right?

11 A. Yes.

12 Q. Is that correct?

13 A. Yes.

14 Q. And would you expect Mr. Serrano to help you  
15 get in compliance if you over diverted under your  
16 OWMAN system?

17 A. Yeah. I would need their assistance. I'd  
18 have to figure out, you know, what I needed to do to  
19 comply.

20 Q. Okay. And Mr. Serrano and the Office of  
21 State Engineer is helpful in that regard?

22 A. Yes.

23 Q. Okay. Does Mr. Serrano help direct farmers  
24 to -- to other individuals or entities that might have  
25 additional water for lease?

1           A.     Not that I'm aware of.

2           Q.     Okay. Do you know anyone who's not been able  
3 to find additional water when they -- when they needed  
4 water under their OWMAN program?

5           A.     You know what, I'm not familiar with any  
6 other entities but my own. Mine keeps me pretty  
7 occupied.

8           Q.     Fair enough. Do you know anyone in the Hatch  
9 Valley has actually had groundwater pumping curtailed  
10 for over diversion from their well or wells?

11          A.     I don't.

12          Q.     Okay. Let's switch to Exhibit 673, please.  
13 And this is New Mexico 673. Do you remember talking  
14 about this one?

15          A.     Yes.

16          Q.     And when were meters first required in the  
17 Hatch Valley; do you recall?

18          A.     I don't recall the year, no.

19          Q.     Okay. Do you know when you put your meters  
20 in?

21          A.     I don't recall the exact year it was.

22          Q.     Was it after 2010?

23          A.     No. It was before then.

24          Q.     Okay. Was it after 2008?

25          A.     I believe it was before then. I can't

1 remember what year it was, but --

2 Q. Okay.

3 A. -- I want to think it was, like, 2005.

4 Q. All right.

5 A. Maybe '4.

6 Q. Now, in this letter, which is dated, I  
7 believe, December, 2019, the last paragraph of the  
8 letter, the -- the State says, "The drought has opened  
9 our eyes to the urgency of better managing our limited  
10 water resources." Do you see that?

11 A. Yes.

12 Q. Okay. And this was 2019, right?

13 A. Yes.

14 Q. But the drought, I think we would agree,  
15 started about 17 years before this letter, right?

16 A. Roughly, yes.

17 Q. Okay. And the next sentence in this letter  
18 says -- states that, "Active Water Resource Management  
19 relies on a step-by-step approach of implementing a  
20 set of administrative tools, including metering and  
21 District-specific regulations." Do you see that?

22 A. Yes.

23 Q. So you obviously know about the metering,  
24 right?

25 A. Yes.

1           Q.     But there haven't been any District-specific  
2 regulations adopted by the State of New Mexico for the  
3 Hatch Valley since the start of the drought roughly 19  
4 years ago, have there?

5           A.     Can you repeat the question, please?

6           Q.     Sure. Let me rephrase it this way. Are you  
7 aware of any District-specific regulations adopted by  
8 the State of New Mexico for the Hatch Valley since the  
9 start of the drought 19 years ago?

10          A.     I don't know. I don't know if there's any  
11 regulations. I know that they have been working on a  
12 fallowing program for the, you know, last few years  
13 developing, you know, a fallowing program.

14          Q.     But as far as you know, there are no  
15 District-specific regulations that have been  
16 implemented in the Hatch Valley in the last 20 years?

17          A.     As far as I know, no.

18          Q.     Okay. All right.

19                 MR. DUBOIS: Could we go to  
20 Demonstrative 8, please?

21          Q.     (BY MR. DUBOIS) This is Demonstrative 8 that  
22 you talked about, lab value. Where is this well? It  
23 is on the Garfield lateral, right?

24          A.     Yes. Surface water is irrigated off the  
25 Garfield lateral. It's a rental property that I rent.

1 This well is -- we mean the coughing well, but it's  
2 located right off of Highway 187.

3 Q. Where is this well relative to the map you  
4 looked at in New Mexico Demo 23?

5 A. This well is on a farm adjacent to that farm,  
6 so the farm is actually a rock-throwing distance from  
7 this well.

8 Q. Okay. East or west?

9 A. It would be north and east, a little east.

10 Q. Okay. So north and east of this -- okay. So  
11 that would be essentially along the east edge of the  
12 -- of the Hatch Valley?

13 A. Yeah. It's on the west side of Highway 187.

14 Q. Okay.

15 A. So it's kind of on the corner of where the  
16 Garfield lateral crosses 187 the second time.

17 Q. You sort of anticipated my next question is  
18 what's a coughing well?

19 A. Well, this well has actually been replaced.  
20 It's a well on a rental property. It was replaced, I  
21 want to say 2016 or 2017. The well that it replaced  
22 didn't have -- you know, pump very well, so the water  
23 -- it would pump for a little while and then it would  
24 surge and then pump again, so we'd call it the  
25 coughing well because of that.



1           Q.    What does -- what do you mean when you say it  
2   surges?

3           A.    All the perforations were plugged up so it  
4   would actually kind of run out of water, and we  
5   probably had the pump oversized for the amount of  
6   water that it pumped.  So, you know, with all the --  
7   the salts and iron in the water, it had plugged up the  
8   perforations and so we had to -- we had -- our  
9   landlord actually replaced the well, and now it  
10   produces a decent amount of water.

11          Q.    Okay.  And since this is a rental property,  
12   it's not tied into the system you share with your  
13   other properties; is that correct?

14          A.    We do share water back and forth.  We use,  
15   you know, the water together to, you know, get a  
16   larger quantity to irrigate more efficiently.

17          Q.    Am I correct that -- that this report should  
18   be read that -- that this well -- is this -- was this  
19   the measurement before or after you replaced the well?

20          A.    After.

21          Q.    Okay.  And it shows measurement of 2,045  
22   parts per million total dissolved solids, is that the  
23   way I read this?

24          A.    Yes.

25          Q.    Okay.  How many of your other wells have TDS

1 in excess of 2,000 parts per million?

2 A. On the Garcia Farm, we have five wells on  
3 there, and all of those test above 2,000.

4 MR. DUBOIS: Let's go to Exhibit 24,  
5 please, Demo Exhibit 24.

6 Q. (BY MR. DUBOIS) Mr. Franzoy, this is your  
7 letter to EBID dated April 16th, 2014, right?

8 A. Yes.

9 Q. Okay. And in the letter, you acknowledge  
10 that, "EBID advocated for the growers groups in  
11 adopting and implementing the operating agreement to,  
12 quote, protect our groundwater."

13 MR. DUBOIS: Can you blow that up, Seth?  
14 First paragraph.

15 Q. (BY MR. DUBOIS) My apologies for not having  
16 that blown up so that I can actually read it. The  
17 first sentence, the second line says, "Acknowledges  
18 Elephant Butte Irrigation District, EBID's advocacy  
19 for grower groups in the adoption and implementation  
20 of the Operating Agreement to protect our  
21 groundwater." Do you see that?

22 A. Yes.

23 Q. And your father helped negotiate the 2008  
24 Operating Agreement; am I right?

25 MR. OGAZ: Objection; beyond the scope

1 of direct.

2 **JUDGE MELLOY:** Well, he's talked about  
3 the operating -- go ahead.

4 A. My dad was a board meeting -- I mean, I'm  
5 sorry, a board member during that time.

6 **Q. (BY MR. DUBOIS)** More than that, he actually  
7 helped negotiate it, didn't he?

8 A. I'm not aware that he did any negotiating on  
9 the operating agreement.

10 **Q. Okay. So roughly six years after the 2008**  
11 **Operating Agreement was entered into, it was your**  
12 **stated position that the Operating Agreement was**  
13 **adopted quote, to protect our groundwater, right?**

14 A. Yes.

15 **MR. DUBOIS:** Okay. All right. I have  
16 nothing further of this witness, Your Honor. Thank  
17 you.

18 Thank you, Mr. Franzoy.

19 **JUDGE MELLOY:** Mr. Deitchman?

20 **MR. DEITCHMAN:** Yes, Your Honor. I just  
21 have one question.

22 CROSS-EXAMINATION

23 BY MR. DEITCHMAN:

24 **Q. Mr. Franzoy, my name is Rich Deitchman. I'm**  
25 **one of the attorneys for Texas in this case. Nice to**

1 meet you today.

2 A. Nice to meet you.

3 Q. Mr. Franzoy, isn't it true that you want more  
4 surface water and the ability to continue to pump  
5 groundwater to the extent the crops need them?

6 A. It is true that I prefer surface water over  
7 groundwater.

8 Q. But you -- you ultimately want more surface  
9 water and to maintain the ability to continue to pump  
10 groundwater, correct?

11 A. Yes.

12 MR. DEITCHMAN: I have no further  
13 questions, Your Honor.

14 JUDGE MELLOY: Redirect?

15 MR. OGAZ: Yes, Your Honor. A couple  
16 few questions.

17 REDIRECT EXAMINATION

18 BY MR. OGAZ:

19 Q. Mr. Franzoy, do you use 5-and-a-half  
20 acre-feet on all of your acreage every year?

21 A. No.

22 Q. Does the amount of water you use on each acre  
23 vary per year?

24 A. The amount varies from field to field and  
25 year to year.

1           Q.    What is the most water you use on an acre?

2           A.    I -- I have one particular farm that has  
3 really sandy soil, and we've used up to 7-and-a-half  
4 acre-feet of water on alfalfa.

5           Q.    What is the least amount of water that you  
6 use on an acre?

7           A.    I've used zero. I've left some fallow and  
8 not applied any water.

9           Q.    All right. And earlier, you said that you  
10 usually use about 3-and-a-half acre-feet per acre; is  
11 that correct?

12          A.    Yeah, it's approximate.

13          Q.    So what would happen to an acre of chile if  
14 you used 5-and-a-half acre-feet on that acre?

15          A.    It would die with disease that we get, what  
16 they call phytophthora. It's a root rot. It would  
17 kill the plant.

18          Q.    How much has -- how has your -- let me  
19 rephrase that. Have you installed more drip  
20 irrigation since 2006?

21          A.    Well, yes, I have. We tested it in 2006 and  
22 then applied or started installing later on and year  
23 by year until about three or four years ago, we have  
24 everything.

25          Q.    How much water did you -- sorry. How many

1       acres of drip irrigation did you start with?

2           A.     12.

3           Q.     How many acres do you have drip irrigation on  
4       now?

5           A.     About 600 in -- in the Hatch Valley. All of  
6       my properties outside of the Hatch Valley is drip  
7       irrigation.

8           Q.     How much -- or what was the reason for the  
9       increased amount of drip irrigation you're using?

10          A.     To better manage my water and specifically  
11       the salinity of my water.

12                   MR. OGAZ: Thank you. No further  
13       questions, Your Honor.

14                   JUDGE MELLOY: Mr. Dubois, anything  
15       further?

16                   MR. DUBOIS: No, Your Honor. Sorry.  
17       Little slow on the trigger on my mouse.

18                   JUDGE MELLOY: All right.  
19       Mr. Deitchman?

20                   MR. DEITCHMAN: Nothing further for this  
21       witness.

22                   JUDGE MELLOY: All right. Thank you,  
23       Mr. Franzoy. You're excused. We appreciate your  
24       testimony.

25                   THE WITNESS: Thank you, Judge.

1                   **JUDGE MELLOY:** Well, it's getting close,  
2 but let's -- let's start with Mr. Garcia. Let's bring  
3 him in, and we'll get the preliminaries out of the  
4 way. Who's going to take the examination, Mr. Ogaz?

5                   **MR. OGAZ:** Ms. Atton, I believe.

6                   **JUDGE MELLOY:** Why don't we just go off  
7 camera while we switch. As soon as we can make the  
8 change, let's at least get the preliminaries out of  
9 the way.

10                  **MR. OGAZ:** Excuse me. It'll be  
11 Mr. Draper.

12                  **MR. DEITCHMAN:** We're switching  
13 attorneys here, as well.

14                  **JUDGE MELLOY:** Okay.

15                                 (Recess.)

16                  **MR. DRAPER:** Good afternoon, Your Honor.

17                  **JUDGE MELLOY:** Good afternoon,  
18 Mr. Draper. The record should reflect that we have  
19 Ms. Barfield for Texas, Ms. Coleman for United States,  
20 Mr. Draper for New Mexico, and Mr. Hartman remains on  
21 for Colorado. I know we won't get very far into  
22 substantive testimony, but I thought we could get some  
23 of the preliminaries out of the way so are you ready  
24 to call your witness, Mr. Draper?

25                  **MR. DRAPER:** Yes. Thank you, Your

1 Honor. We would call Dr. Jorge Garcia to the stand.

2 **JUDGE MELLOY:** Dr. Garcia, would you  
3 raise your right hand, please, to be sworn? Do you  
4 swear or affirm that the testimony you're about to  
5 give will be the truth, the whole truth, and nothing  
6 but the truth? You're on mute. You're still on mute.

7 **MR. DRAPER:** It looks like there's an  
8 additional mute, Your Honor. Let me -- let me see if  
9 I can get that taken care of quickly.

10 There, I think that may have taken care  
11 of it, Your Honor.

12 **JUDGE MELLOY:** Okay. I think I heard  
13 you -- saw you mouth "I do"; is that correct?

14 **THE WITNESS:** I do, Your Honor.

15 **JUDGE MELLOY:** Thank you. Let me just  
16 ask you a couple questions we've asked all of the  
17 witnesses. First, is there anyone in the room with  
18 you?

19 **THE WITNESS:** No, no one.

20 **JUDGE MELLOY:** Do you have any documents  
21 that you will be referring to beyond what's in the  
22 witness binders -- pardon me, exhibit binders?

23 **THE WITNESS:** Just the exhibit binder.

24 **JUDGE MELLOY:** All right. Then I do  
25 need to advise you, Mr. Garcia, that you're not



1 allowed to have any communication devices, iPhones,  
2 iPads, laptops, et cetera. Do you understand that?

3 THE WITNESS: Yes. I don't have any.

4 JUDGE MELLOY: All right. Thank you.  
5 Then I'd ask if you would state your name and spell it  
6 for the record, please.

7 THE WITNESS: Jorge A. Garcia,  
8 J-O-R-G-E, A, G-A-R-C-I-A.

9 JUDGE MELLOY: And then let me go over  
10 the exhibits. We have a number of A exhibits here,  
11 New Mexico 881, New Mexico 943, 944, 946, 947, 949,  
12 955, 956, 957, 963, New Mexico 2140 -- excuse me --  
13 New Mexico 2491, New Mexico 2492, and New Mexico 2493  
14 are all A exhibits and will be admitted. New Mexico  
15 Demonstrative Exhibit Garcia is an A exhibit and will  
16 be admitted. For cross-examination we have New Mexico  
17 952, 956 are A exhibits and will be admitted. Texas  
18 366 is an A exhibit and will be admitted.

19 All right. Mr. Draper, you may begin.

20 MR. DRAPER: Thank you, Your Honor.

21 JORGE GARCIA,  
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DRAPER:

25 Q. Good afternoon, Dr. Garcia.

1           A.     Good afternoon.

2           Q.     You are here to provide information and  
3 testimony with regard to the City of Las Cruces Water  
4 Users?

5           A.     That's correct.

6           Q.     All right. Let's start with your resume.  
7 That's Exhibit New Mexico 0963, if you please. Is  
8 this your resume, Doctor?

9           A.     Yes.

10          Q.     All right. Is it a true and accurate record  
11 of your professional career?

12          A.     Yes.

13          Q.     Using this resume as a -- as a guide, would  
14 you please briefly state your education and  
15 professional experience relative to your testimony  
16 today?

17          A.     I hold a PhD in civil engineering, a master's  
18 in civil engineering and a bachelor's in ag and  
19 irrigation engineering from Utah State University.

20          Q.     And in addition to that, you have some  
21 professional licenses, do you?

22          A.     I'm a licensed professional engineer in New  
23 Mexico and Colorado.

24          Q.     When did you start working for the City of  
25 Las Cruces?

1           A.     1989.

2           Q.     And how many years did you work for the City  
3 of Las Cruces Utilities Department as an employee?

4           A.     About 30 years and ten months.

5           Q.     During your employment with the Utilities  
6 Department, prior to being appointed director of the  
7 Department, what were your responsibilities during  
8 that period?

9           A.     I was a design -- I started in 1989 as a  
10 design engineer. I was involved in the design of  
11 water wells, pump stations, pipelines, water storage  
12 tanks. I was involved in the development or the  
13 implementation of the first supervise --  
14 computer-based supervisory control system. It's also  
15 called SCADA system, and I was involved in quite a few  
16 other design projects, mainly on the water area. When  
17 I became department head in 1986, chief utilities  
18 engineer, I was in charge of all of the engineering  
19 for gas water, wastewater, and solid waste of the  
20 utilities.

21          Q.     All right. And when did you become director  
22 of the department?

23          A.     In 2001.

24          Q.     And what were your duties and  
25 responsibilities as director?

1           A.     The main responsibilities were administrative  
2     and financial management of all of the utilities, gas  
3     water, wastewater, solid waste. That involved rate  
4     setting, financing for -- for projects. I also remain  
5     very involved in a lot of big or large projects with  
6     -- with my staff, like the water quality laboratory,  
7     the Greek Walnut treatment facility, the wastewater  
8     treatment plant, projects, and more recently, I was  
9     very involved in the bringing the first two  
10    performance contracts to the Utility in an agreement  
11    with the private sector. We had a contract for the  
12    water utility on advance metering infrastructure and a  
13    contract, Part B of that project is the energy --  
14    energy performance contract for the wastewater  
15    utilities, and that was one of the last projects I was  
16    involved in.

17           **Q.     Now, as director, did you continue to provide**  
18    **technical oversight as well as the type of oversight**  
19    **you just mentioned?**

20           A.     That is correct. I was very involved in a  
21    lot of the large projects, not on the smaller  
22    projects.

23           **Q.     When did you retire from the Utilities**  
24    **Department?**

25           A.     September 1, 2020.

1           Q.    Do you have a continuing relationship with  
2   the Las Cruces Utilities Department?

3           A.    I'm currently a consultant for the city  
4   utility.

5           Q.    To the present time?

6           A.    Yes.

7           Q.    All right.  Let's take a look at  
8   Demonstrative No. 2.  This demonstrative -- thank you  
9   -- is a summary of the primary topics of your  
10   testimony.  Could you briefly describe for the Master  
11   what you expect to cover today in your testimony?

12          A.    Yes.  The first topic is going to be my  
13   experience over 30 years with the city water and waste  
14   -- principally water and wastewater systems.  I was  
15   very involved in the 40-year water development plan,  
16   2017 plan, that includes all of our city municipal  
17   rights and permits.  I'll be presenting some  
18   information or discussing some of the recent  
19   diversions and return flows based on the data compiled  
20   by the City.  I will be talking about some of the  
21   state engineer regulations that -- that the City was  
22   compliant with.  I will provide some summary of the  
23   CLC water conservation program and a discussion of  
24   ownership of EBID acres and water rights.

25          Q.    Thank you.  And if I understand correctly,

1 you will be testifying based on your personal  
2 knowledge gained over the years from 1989 to the  
3 present; is that right?

4 A. That is correct.

5 Q. Okay. All right. Let's go to the next  
6 demonstrative, No. 3, if you please. Let's -- let's  
7 point -- point out for the Court the location of the  
8 City of Las Cruces in the basin with the help of the  
9 two maps that are shown on this demonstrative, if you  
10 please.

11 A. Yeah. The map on the left is adapted from  
12 the report of the Rio Grande Compact Commission. You  
13 can see the Rio Grande Basin, the red circle, we are  
14 indicating the location of the City of Las Cruces.  
15 The map to the right is extracted from the 40-year  
16 water plan Figure 1, and basically shows the -- in  
17 gray, it shows the -- the Utility or water service  
18 area of the Utility. You have labeled there the  
19 Jornada del Muerto Basin at the top. The map shows --  
20 goes all the way to the area of the Hueco Basin, and  
21 then you see the Mesilla Basin to the south of the  
22 bottom of the map, and the Corralitos and Nutt-Hockett  
23 basin to the west of the city. The Jornada and  
24 Mesilla Basins are the main basins where the city well  
25 fields are located.

1           Q.    All right. You mentioned also the Hueco  
2 basin is shown on the map?

3           A.    I mentioned that, yes. We don't have any  
4 wells on that basin.

5           Q.    All right. What is the approximate  
6 population of the city at this time?

7           A.    It's 111,385, I believe, according to the  
8 2020 census.

9           Q.    And are most of the water users served by the  
10 Las Cruces Utilities Department within the city  
11 limits?

12          A.    Yes. We have a significant number of  
13 customers. There was an acquisition of private water  
14 utility a few years back so we acquired about 3,500  
15 customers in a growing area surrounding the city.

16          Q.    All right. Now, one of these maps, the one  
17 on the right is from the 40-year water development  
18 plan. Let's bring that up. That's New Mexico Exhibit  
19 2492. What is the -- the 40-year water development  
20 plan of the City of Las Cruces?

21          A.    Well, the document in front of us is the  
22 cover of the main document that describes the -- the  
23 overall planning framework for water supply for the  
24 city. The last plan was the 2017 plan.

25          Q.    Was the 40-year plan that we're seeing here

1 as Exhibit New Mexico 2492, was that prepared by you  
2 or under your supervision?

3 A. It was prepared by Shomaker & Associates, a  
4 water resource and environmental consulting firm, and  
5 I did supervise and was involved in the review of the  
6 work in conjunction with a lot of my staff.

7 Q. Approximately how long did it take to prepare  
8 this plan?

9 A. About a year and a half.

10 Q. Now, as a 40-year water development plan, is  
11 that a voluntary exercise or is that required by the  
12 New Mexico state engineer?

13 A. Well, it is required, but I believe the City  
14 would do it anyway. It's a very robust document that  
15 it is the first level of planning of -- of your water  
16 supply and population projections and conservation  
17 efforts, so it's a very important document.

18 Q. Is it fair to say that the plan covers just  
19 about all the important aspects of the city water  
20 rights and water planning?

21 A. That is correct.

22 Q. Let's take a look at the -- at the table of  
23 contents, which appear on Pages 10 and 11 of the  
24 document. There we have it. Using that as a guide,  
25 would you briefly describe what the contents are of



1     **the plan?**

2           A.     Yeah. The plan starts with a executive  
3     summary and describes some of the growth projections  
4     and move the conservation goals in a very short  
5     summary, then it goes into water supply development,  
6     looks at different supply alternatives, in this case  
7     importation, aquifer storage and recovery, potentially  
8     in the future deep well brackish desalination. In  
9     some of the timelines for implementation for some of  
10    those alternatives. Then the plan goes into a very  
11    detailed description of the water rights and wells at  
12    the time of the -- of the plan -- plan development.  
13    It presents, on the demand side, the demand potential  
14    water demand projections and population growth  
15    projections in the next 40 years. It gives an outline  
16    of conservation measures in place and projected  
17    conservation measures, and then there's a series of  
18    references that contain tables, figures, and large  
19    list of appendices that detail -- provide background  
20    in -- to the main document.

21           **Q.     Now, together with the appendices, about how**  
22    **many pages is this 40-year water development plan?**

23           A.     I believe 750 pages or so.

24           **Q.     Let's take a look at the list of appendices.**  
25    **This appears on Page 14 of the exhibit. Would you**

1     **pick out from this list of appendices the ones that**  
2     **are the most important in your view?**

3         A.     Well, in my view, very critical ones are  
4     Appendices A, B, and C first. The first one is a  
5     description of the pre-basin LRG-430 right. Appendix  
6     B addresses the permits for the -- in the Jornada del  
7     Muerto Basin, and Appendix C addresses the West Mesa  
8     well field permit. There's also a section in  
9     background on hydrogeology is very summarized, a list  
10    of existing wells. Appendix H describes the return  
11    flow plan framework that is used to report wastewater  
12    returns back into the river. There's a series of  
13    details on other smaller water rights that the City  
14    has. There is water conservation ordinance in the  
15    water conservation plan at the time, and the goals are  
16    attached as part of that Appendix P, I believe. The  
17    last appendix is water rights associated with the  
18    acquisition of the private water company I discussed  
19    earlier.

20         **Q.     Now, the -- the appendices are -- are**  
21     **contained in three exhibits separate from the text of**  
22     **the report; is that right?**

23         A.     That's correct. They are grouped in three  
24     exhibits.

25         **Q.     For the record, I would state that Appendices**

1 A through G that we're seeing here are contained in  
2 New Mexico Exhibit 2491. Appendices H through L are  
3 contained in Exhibit New Mexico 2493, and Appendices M  
4 through Q are contained in New Mexico Exhibit 956.

5 JUDGE MELLOY: Mr. Draper, is this a  
6 good point to break or do you want to finish up on the  
7 -- on -- if you have a few more questions about this,  
8 that's fine. Otherwise, if it's a good breaking  
9 point, maybe we'll stop for the evening.

10 MR. DRAPER: Let me just ask the witness  
11 two more questions if I may, Your Honor, and then I'll  
12 be --

13 JUDGE MELLOY: Sure. Go ahead.

14 Q. (BY MR. DRAPER) Is this 2017 water  
15 development plan the most recent plan that's been  
16 prepared by the City of Las Cruces?

17 A. Yes, it is.

18 Q. And how often does the City redo or update  
19 the 40-year plan?

20 A. At least every ten years. This one was just  
21 done nine years after the prior one.

22 MR. DRAPER: All right. Your Honor,  
23 this would be a good place to break then.

24 JUDGE MELLOY: All right. Then we'll  
25 take our evening recess, and I'll see everyone

1 tomorrow morning at 11:00 Central time. Is there  
2 anything we need to talk about before we break?

3 **MR. DRAPER:** Not that I'm aware of, Your  
4 Honor.

5 **JUDGE MELLOY:** All right. We'll see  
6 everybody in the morning. Thank you.

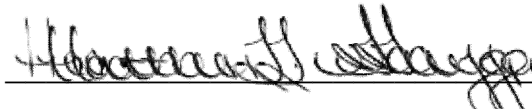
7 (The proceedings adjourned at 5:05 p.m.)  
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I further certify that I am not, in any capacity, a regular employee of any of the parties in whose behalf this status hearing is taken, nor in the regular employ of any of the attorneys; and I certify that I am not interested in the cause, nor of kin or counsel to any of the parties.

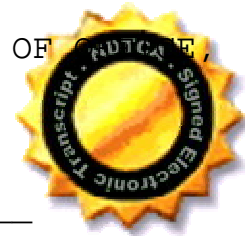
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|---|---|---|--|--|
| <b>A</b>  | <b>acid</b> 172:6<br>176:13   | 80:20 81:1<br>82:7,9 86:5,6,7<br>86:8,9 88:13<br>88:13,17,18,25<br>89:8 95:7,9<br>96:6 97:9<br>111:10,11<br>159:20,22,24<br>160:19,20,21<br>160:22,22<br>170:24 179:20<br>198:2,5,7,10<br>198:20,23<br>199:2,4,7,12<br>199:13,20,24<br>200:6,11,17,25<br>201:3 203:22<br>204:5 208:8<br>220:20 221:4<br>221:10,14 | 191:12,17<br>192:4,20<br>198:14,14,18<br>198:23 208:7<br>208:10,11<br>209:1,10,15<br>210:12 211:18<br>222:1,3 229:24   | <b>adjoined</b> 236:7<br><b>adjudicated</b><br>70:6 80:25<br>111:8,10<br><b>adjudication</b><br>31:8 44:17<br>48:4,9,13,18<br>54:24 81:8<br>181:6<br><b>adjusted</b> 12:14<br><b>adjustment</b> 37:3<br><b>administer</b> 20:2<br>77:11 78:5<br><b>administration</b><br>43:15 44:12<br>50:9 51:21,23<br>56:6 68:10<br>74:14,21,22<br>75:1,20 76:18<br>76:21 78:9<br>90:7 135:18<br>208:13<br><b>administrative</b><br>5:22 6:20 88:8<br>89:3 93:19<br>214:20 228:1<br><b>administrativ...</b><br>87:24<br><b>admission</b> 79:19<br>150:19<br><b>admit</b> 38:4<br>110:4<br><b>admits</b> 101:9<br><b>admittance</b><br>116:7<br><b>admitted</b> 11:19<br>25:25 26:25<br>30:17 38:5<br>42:24 45:14,19<br>45:22 46:7<br>80:2,2 91:9<br>110:9 117:3<br>150:12,13,14<br>150:17,19,23<br>151:7 225:14<br>225:16,17,18<br><b>admonitions</b> |
| <b>A-W-R-M</b> 43:21  | <b>acids</b> 172:5  | 111:10,11<br>159:20,22,24<br>160:19,20,21<br>160:22,22<br>170:24 179:20<br>198:2,5,7,10<br>198:20,23<br>199:2,4,7,12<br>199:13,20,24<br>200:6,11,17,25<br>201:3 203:22<br>204:5 208:8<br>220:20 221:4<br>221:10,14  | <b>acronym</b> 43:20<br><b>acronyms</b> 56:1<br><b>action</b> 135:15<br><b>actions</b> 68:22<br>180:18 182:20<br>182:21<br><b>active</b> 43:6,6,14<br>43:16 68:10<br>75:4,19 82:15<br>214:18<br><b>actively</b> 58:6<br><b>activities</b> 188:15<br><b>actual</b> 29:15<br>31:18 35:6<br>92:7 115:13<br><b>ad</b> 179:8<br><b>adapted</b> 230:11<br><b>add</b> 6:7,13 43:24<br>210:14<br><b>added</b> 6:12<br><b>addition</b> 101:8<br>109:18 122:23<br>226:20<br><b>additional</b> 54:1<br>73:15 74:3<br>102:7 103:20<br>129:12,12<br>212:6,25 213:3<br>224:8<br><b>address</b> 46:17<br><b>addressed</b> 46:17<br><b>addresses</b> 72:11<br>234:6,7<br><b>addressing</b><br>73:12<br><b>adequate</b> 40:20<br><b>adjacent</b> 143:25<br>181:21 193:17<br>216:5 |  |
| <b>a.m</b> 1:12   | <b>acknowledge</b><br>6:10 218:9  | <b>acre-foot</b> 13:10<br>33:12 45:10<br>59:20,22 73:8<br>81:13 82:2  |  |  |
| <b>ability</b> 61:22<br>62:21,25 125:3<br>127:18 147:12<br>186:20 220:4,9   | <b>Acknowledges</b><br>218:17   | <b>acreage</b> 9:1<br>13:22 31:9,10<br>31:11,13,18<br>32:23 48:20<br>86:10 131:25<br>137:21 158:5<br>164:4 190:15<br>209:17 220:20  |  |  |
| <b>able</b> 13:21 49:13<br>53:2 57:8<br>60:11 75:23<br>79:14 85:25<br>89:13 92:10<br>137:13,20,21<br>175:23 176:4,7<br>176:14 177:11<br>194:19 200:25<br>206:3,6 209:1<br>213:2 | <b>acknowledgm...</b><br>85:12  | <b>acres</b> 9:1 31:13<br>31:13,15 42:20<br>47:25 84:3<br>88:12,14,15,15<br>97:5 110:18<br>143:10,11<br>144:3,17 157:6<br>157:7,9,10,11<br>157:12,13,23<br>158:2 159:9<br>169:21 187:17<br>187:19 189:5<br>190:9,16,19,21<br>190:23 191:3,9   |  |  |
| <b>abort</b> 40:21,23<br>40:24 168:3  | <b>acquired</b> 204:16<br>231:14  | <b>acre-feet</b> 8:12<br>9:11 10:14<br>13:16 31:25<br>32:5,21 33:8<br>33:11,24,25<br>44:2,8,16 45:1<br>45:4,7 52:16<br>53:18,19,20<br>59:21 61:17<br>69:23,24 70:2<br>72:20,25 73:1<br>75:9 79:5  |  |  |
| <b>aborting</b> 177:6   | <b>acquisition</b><br>231:13 234:18   |   |  |  |
| <b>above-entitled</b><br>1:11   | <b>acre</b> 8:11 12:18<br>12:21,23 13:5<br>19:23 22:17<br>33:12 39:5,9<br>50:14 69:24<br>72:20,25 73:1<br>73:8 79:5<br>81:14 82:3<br>89:8 95:7,9<br>96:6 97:9<br>112:8 132:4<br>159:16 160:16<br>170:3,5 171:5<br>178:6 191:16<br>191:22 198:2<br>198:11,22<br>199:3,4,7,13<br>199:13,20,24<br>200:6,11 201:3<br>203:22 208:9<br>220:22 221:1,6<br>221:10,13,14 |   |  |  |
| <b>absolutely</b> 34:25<br>124:10 125:4<br>125:22 138:11  | <b>abstract</b> 108:11<br>108:12  |   |  |  |
| <b>accept</b> 95:5,6<br><b>accepted</b> 95:8<br><b>access</b> 41:16<br>54:16<br><b>accesses</b> 66:18<br><b>accomplish</b> 69:2<br>69:6   | <b>account</b> 72:22<br><b>accountant</b><br>188:20<br><b>accreditations</b><br>107:15<br><b>accredited</b><br>107:16<br><b>accurate</b> 66:3,7<br>66:8 107:5<br>140:7 226:10<br><b>achieve</b> 74:16   |   |  |  |

|                          |                         |                           |                        |                        |
|--------------------------|-------------------------|---------------------------|------------------------|------------------------|
| 7:12 99:17               | 215:4,9 221:23          | 110:17 114:17             | <b>allotments</b> 77:5 | 38:1,18,23             |
| <b>adopted</b> 75:20     | <b>agree</b> 57:23 72:4 | 114:21 117:19             | 77:9 132:1,6           | 44:21 45:3             |
| 215:2,7 219:13           | 74:4,6 76:22            | 120:8 122:25              | 165:14 211:1           | 52:11 54:11            |
| <b>adopting</b> 218:11   | 77:1 90:8               | 125:15,20                 | <b>allotted</b> 13:1,7 | 59:14 60:2             |
| <b>adoption</b> 218:19   | 91:18 114:10            | <b>agriculturally-...</b> | 112:1 132:3            | 61:11,12 67:23         |
| <b>advance</b> 228:12    | 192:7 193:6             | 126:7                     | 171:4 192:1            | 72:21 79:16            |
| <b>advantage</b> 71:7    | 201:20,25               | <b>agriculture</b> 70:3   | 199:14                 | 81:19,21 82:1          |
| <b>advantages</b>        | 202:7,21 203:4          | 100:25 117:13             | <b>allow</b> 22:1 85:7 | 88:16 91:15            |
| 34:12                    | 207:11,17               | <b>ahead</b> 16:22        | 117:3 141:10           | 94:4,18,24             |
| <b>adverse</b> 135:20    | 214:14                  | 21:8 34:22                | 186:14 197:25          | 95:9 96:5              |
| 138:20                   | <b>agreed</b> 52:19     | 77:25 80:2                | <b>allowed</b> 31:16   | 97:16 125:10           |
| <b>advertised</b> 17:24  | <b>agreement</b> 38:25  | 83:9 87:7 91:6            | 100:2 145:24           | 131:6,6 133:4          |
| <b>advertisement</b>     | 47:15,20 48:3           | 105:14 116:22             | 150:3 180:5            | 163:17 166:7           |
| 179:6                    | 48:17 49:14,22          | 117:5 119:3,8             | 198:10 225:1           | 168:22,23              |
| <b>advice</b> 139:22     | 50:10,25 51:18          | 120:23 123:9              | <b>allowing</b> 53:23  | 169:4,6 170:2          |
| <b>advise</b> 100:1      | 52:15 54:23             | 123:24 128:7              | <b>allows</b> 19:15    | 177:25 178:12          |
| 130:4,6 150:2            | 55:3 56:12,12           | 129:1 131:2               | 20:8 21:20,22          | 179:7,9,12             |
| 224:25                   | 56:16,17,20,22          | 135:13 137:3              | 27:7 52:15             | 198:21 200:12          |
| <b>advocacy</b> 218:18   | 57:3,12 58:24           | 138:9 141:11              | 54:9,10,13             | 203:22 208:10          |
| <b>advocated</b>         | 77:2,8,11 78:4          | 143:1 185:5,21            | 83:25 84:2             | 217:5,10               |
| 218:10                   | 78:10 80:16,19          | 195:19 199:22             | 181:7,19 208:1         | 220:22,24              |
| <b>aerial</b> 17:19      | 80:24 95:21             | 203:3,17 219:3            | <b>alternate</b> 8:18  | 221:5 222:9            |
| <b>affect</b> 130:8,11   | 129:5,6,9,21            | 235:13                    | <b>alternative</b>     | <b>amounts</b> 62:4    |
| 146:23 147:10            | 129:24 130:5            | <b>alarm</b> 43:11        | 74:13,20,25            | 133:12,25              |
| 165:16 168:12            | 130:11,16               | <b>Albuquerque</b>        | <b>alternatives</b>    | 176:18                 |
| 176:5 177:4              | 131:4,16,17             | 106:15                    | 233:6,10               | <b>Ana</b> 108:13      |
| 195:15,22                | 132:15,22               | <b>alfalfa</b> 52:7       | <b>amendment</b>       | 110:21                 |
| 196:4                    | 133:12 134:4            | 97:10,13,14               | 203:9                  | <b>analysis</b> 94:16  |
| <b>affiliated</b> 152:22 | 145:12 153:25           | 143:16 155:3              | <b>amendments</b>      | <b>ancillary</b> 101:2 |
| <b>affirm</b> 99:12      | 157:18 185:11           | 156:11,12                 | 172:4 176:3,21         | 101:3,11               |
| 149:11 224:4             | 185:15 186:3,9          | 160:14,18,25              | 177:17 187:9           | <b>and-</b> 2:7,19,23  |
| <b>affirmative</b>       | 186:12,13,22            | 161:19 165:6              | 187:13                 | <b>and/or</b> 101:1,10 |
| 122:4                    | 186:25 187:10           | 209:15 221:4              | <b>American</b>        | 146:11                 |
| <b>afford</b> 173:21     | 203:14 218:11           | <b>allegedly</b> 101:14   | 107:17 112:21          | <b>ANDREWS</b>         |
| <b>afforded</b> 79:15    | 218:20,24               | <b>allocated</b> 68:22    | 113:10                 | 2:15                   |
| <b>afternoon</b> 98:11   | 219:9,11,12             | <b>allocation</b> 14:11   | <b>amici</b> 58:7      | <b>Angus</b> 112:21    |
| 98:13,17,24              | 228:10                  | 14:16,21 39:4             | <b>amicus</b> 112:24   | <b>animal</b> 107:11   |
| 99:7,8 105:21            | <b>agri</b> 118:15      | 39:7 76:9 77:3            | 153:19                 | <b>announced</b> 12:2  |
| 105:22 144:13            | <b>agribusiness</b>     | 77:6 82:2                 | <b>amount</b> 8:25 9:2 | <b>Announces</b>       |
| 151:16 223:16            | 117:15                  | 191:2 201:3,4             | 9:13,17 10:8           | 80:16                  |
| 223:17 225:25            | <b>agribusinesses</b>   | 201:6                     | 10:21,21 12:1          | <b>annual</b> 85:20    |
| 226:1                    | 118:17 126:3            | <b>allocations</b> 14:6   | 12:13,14,17            | 115:7 128:10           |
| <b>ag</b> 70:2 106:5     | 127:1 137:9             | <b>allotment</b> 95:22    | 13:4 15:9 18:1         | <b>answer</b> 46:12    |
| 114:18 226:18            | <b>agricultural</b>     | 165:19 170:20             | 22:5,8,12,15           | 77:23 78:1             |
| <b>age</b> 40:19         | 79:8 102:21             | 179:17,18,19              | 22:16 27:18            | 86:19 127:14           |
| 154:10                   | 107:12 109:5            | 181:9 194:13              | 31:14,15 32:3          | 128:6 136:4            |
| <b>ago</b> 25:7 114:1    | 109:15,22               | 198:16,17                 | 32:22 33:2             | 137:4 138:10           |

|  |   |  |  |   |
|--|---|--|--|---|
| 143:2 145:9<br>146:17 185:24<br>203:17 204:12<br>208:18<br><b>answered</b> 203:1<br><b>anticipate</b> 6:8<br><b>anticipated</b><br>100:22 216:17<br><b>anticipation</b><br>140:16<br><b>anybody</b> 179:10<br>184:15 211:14<br><b>anymore</b> 59:24<br>64:7 106:10<br>198:6<br><b>anyway</b> 16:22<br>32:17 56:2<br>232:14<br><b>apologies</b> 218:15<br><b>apologize</b> 79:25<br>80:10 199:10<br><b>apparently</b> 7:24<br>122:24<br><b>appear</b> 232:23<br><b>appearance</b> 5:6<br>98:11<br><b>appearances</b><br>148:16<br><b>appearing</b> 5:5<br>148:24<br><b>appears</b> 23:11<br>70:23,24 77:4<br>132:16 233:25<br><b>appendices</b><br>233:19,21,24<br>234:1,4,20,25<br>235:2,3<br><b>appendix</b> 234:5<br>234:7,10,16,17<br><b>application</b> 17:6<br>17:11 18:2,14<br>19:13 64:18<br>65:15,20 66:6<br>66:15,18 123:6<br>126:19<br><b>applications</b><br>123:15 124:8 | 158:25<br><b>applied</b> 10:13<br>13:25 19:16<br>32:1 65:22<br>174:11 199:3<br>221:8,22<br><b>apply</b> 34:17<br>72:24 73:1<br>163:9,14,14<br>172:3,5 174:10<br>174:16 175:5<br>176:2,11,17,21<br>179:3,4 204:5<br><b>applying</b> 10:9<br>10:11 163:20<br>176:12,13<br>178:13 187:8<br><b>appoint</b> 114:13<br><b>appointed</b> 114:5<br>114:6,14<br>140:20 141:19<br>141:21 227:6<br><b>appointing</b> 6:3<br><b>appointment</b><br>141:3,15<br><b>appointments</b><br>141:25 142:2<br><b>appraisal</b> 103:12<br>104:19 109:6<br>113:9,14,18<br>122:10,18<br>127:9<br><b>appraisals</b><br>109:21 113:20<br><b>appraised</b><br>122:16<br><b>appraiser</b><br>107:17,19<br><b>appraisers</b><br>104:19 107:18<br>113:11 124:13<br><b>appreciate</b> 98:3<br>146:4 148:3,10<br>189:19 222:23<br><b>appreciation</b><br>6:10<br><b>approach</b> 83:18 | 214:19<br><b>appropriate</b><br>47:6 102:16<br>140:15<br><b>approval</b> 109:21<br><b>approve</b> 56:20<br>58:3 179:11<br><b>approved</b> 211:9<br>211:13<br><b>approximate</b><br>159:19 221:12<br>231:5<br><b>approximately</b><br>8:12 12:25<br>13:9 16:24<br>17:20 31:13<br>49:7 145:10<br>157:10,12<br>159:11,20,23<br>232:7<br><b>April</b> 160:5<br>161:4 218:7<br><b>aquifer</b> 64:4,13<br>66:17,18,21<br>67:5,7 93:18<br>93:19 173:4,7<br>195:1,9,9,14<br>195:22 196:4<br>196:11,12,13<br>197:10 233:7<br><b>area</b> 42:1 75:16<br>76:4 79:9<br>102:24 104:25<br>106:5,18 108:3<br>109:5,16,17,22<br>114:18,20<br>118:8,15<br>119:16,20<br>126:4,24 127:6<br>128:8 130:8<br>134:8,15<br>135:15 137:8<br>142:3 158:8<br>173:16 176:13<br>183:8 193:4,7<br>227:16 230:18<br>230:20 231:15 | <b>areas</b> 73:23 76:5<br>96:7 104:23<br>110:14 121:4<br>181:18<br><b>Arizona</b> 10:24<br>42:2 96:13<br>175:14<br><b>arrangement</b><br>157:14 169:18<br><b>array</b> 118:17<br><b>ascertain</b> 199:21<br><b>asked</b> 46:12<br>95:15 96:25<br>104:8 202:25<br>205:9 224:16<br><b>asking</b> 26:11<br>28:25 46:1<br>61:8 65:6<br>66:12 104:11<br>122:2 123:17<br>129:12 131:20<br>133:2,8 135:23<br>136:14 196:9<br><b>aspects</b> 114:21<br>130:7 232:19<br><b>assert</b> 100:15<br><b>assessed</b> 73:16<br><b>assessment</b><br>11:21,23,24<br>12:1,5,13,17<br>12:21 13:5<br>15:5 31:14<br>39:15 63:14,15<br>126:23,24,25<br>127:3 135:17<br>157:20 165:25<br>169:22<br><b>assessments</b><br>123:19<br><b>assets</b> 106:3<br>127:18<br><b>assist</b> 74:24<br>206:6<br><b>assistance</b><br>212:17<br><b>assistant</b> 78:23<br>79:2 | <b>assistants</b><br>111:25<br><b>assisted</b> 181:3<br><b>assists</b> 156:21<br><b>associated</b> 144:3<br>157:21 171:19<br>171:24 234:17<br><b>Associates</b> 232:3<br><b>association</b> 42:1<br>56:1 75:2<br>108:23 112:21<br>112:23 127:2<br>152:25 153:2<br><b>assume</b> 97:10<br>141:18<br><b>assumes</b> 142:18<br><b>assuming</b><br>114:16,23<br>183:3<br><b>assured</b> 113:21<br><b>assuring</b> 74:17<br><b>attached</b> 49:19<br>234:16<br><b>attachment</b> 71:1<br>72:9 74:10<br><b>attempt</b> 45:5<br><b>attend</b> 56:25<br>186:6<br><b>attended</b> 43:8<br>107:10<br><b>attending</b><br>186:12<br><b>attention</b> 29:14<br>41:19 53:11<br>207:19<br><b>Atton</b> 223:5<br><b>attorney</b> 2:20<br>47:10 77:17<br>190:6<br><b>attorneys</b> 139:5<br>219:25 223:13<br>237:12<br><b>audio</b> 184:5,5,12<br><b>auditors</b> 135:19<br><b>August</b> 134:4<br>161:4 167:18<br><b>authority</b> 102:8 |
|--|---|--|--|---|



|  |  |   |   |   |
|--|--|---|---|---|
| <b>availability</b><br>39:19 89:6<br>92:2,8 123:14<br>124:7 127:6<br>137:6 146:1,6<br>146:23 147:9<br>186:25 | <b>awful</b> 25:9<br>104:18<br><b>AWRM</b> 43:6,18<br>44:15 47:3<br>69:1,5,8,9,15<br>71:6 72:5 75:5<br>82:22 88:25<br><b>AWRMs</b> 68:14<br>68:17,21 71:12<br>71:23 75:15<br>82:19 | <b>backwards</b><br>107:23<br><b>badly</b> 139:13<br><b>bags</b> 164:14<br><b>balance</b> 33:7<br>89:18 102:19<br>143:16<br><b>balances</b> 145:1<br><b>bandwidth</b><br>184:9,11,14<br><b>bank</b> 108:22<br>124:11 162:19<br>189:12<br><b>Barfield</b> 2:8<br>223:19<br><b>base</b> 118:10<br><b>based</b> 10:19<br>12:17 16:3,16<br>72:19 103:10<br>103:11,11,16<br>105:7,9 109:25<br>113:18 115:17<br>116:14 119:6<br>120:7,9,14,17<br>132:20 137:23<br>152:10 229:19<br>230:1<br><b>basic</b> 117:23<br><b>basically</b> 20:24<br>23:18 45:12<br>85:11 90:3<br>108:6 109:13<br>117:10 119:19<br>130:6 133:23<br>137:5 143:16<br>145:4,20 185:2<br>196:16,22<br>206:10 230:16<br><b>basin</b> 72:24,25<br>73:6,10 76:3<br>109:17 115:15<br>118:19 123:1<br>192:12,14<br>203:11 208:20<br>209:20,20<br>230:8,13,19,20<br>230:21,23 | 231:2,4 234:7<br><b>basins</b> 73:2,3,5,8<br>192:22 208:21<br>230:24,24<br><b>basis</b> 13:2 33:12<br>74:20 101:20<br>101:25 115:8<br>119:20 131:12<br>143:23 180:3<br><b>bear</b> 8:18<br><b>beat</b> 57:22<br><b>beating</b> 123:2<br><b>becoming</b><br>153:23<br><b>began</b> 109:1<br><b>beginning</b> 6:25<br>28:8 202:11<br><b>begun</b> 38:12<br><b>behalf</b> 119:1<br>237:11<br><b>believe</b> 10:17<br>14:8 37:6<br>49:24 61:18<br>63:24 69:7,20<br>73:11 78:14,16<br>81:6 84:8 91:7<br>91:9,12 95:10<br>104:2,8 111:21<br>112:11 141:25<br>143:11,21<br>145:3,10 146:6<br>146:14 151:1<br>183:1 186:10<br>190:19 191:24<br>197:16 198:5,5<br>200:14 208:22<br>210:4 212:2<br>213:25 214:7<br>223:5 231:7<br>232:13 233:23<br>234:16<br><b>bells</b> 43:11<br><b>belt</b> 11:3<br><b>beneficial</b> 20:23<br>44:9 47:12<br>52:3,6 53:1,5<br>70:7 71:17 | 82:12 86:3<br>88:21 164:7<br><b>benefit</b> 32:16<br>41:22 161:11<br>166:6<br><b>benefits</b> 162:12<br>162:21 181:13<br><b>best</b> 15:4 163:4<br>166:6<br><b>better</b> 34:14<br>128:15 172:1<br>175:4 176:3<br>202:23 214:9<br>222:10<br><b>better-quality</b><br>174:20<br><b>better-yielding</b><br>162:25<br><b>beyond</b> 67:8<br>199:16 218:25<br>224:21<br><b>big</b> 8:18 56:2<br>228:5<br><b>bigger</b> 21:21<br>34:15,18<br>181:23<br><b>biggest</b> 117:12<br>205:18<br><b>bill</b> 15:15 36:25<br>37:14,18 79:13<br>170:6<br><b>billion</b> 117:18<br><b>bills</b> 36:24<br><b>binder</b> 224:23<br><b>binders</b> 224:22<br>224:22<br><b>bit</b> 8:20 16:6<br>22:14 27:11,20<br>28:6 29:7 40:1<br>68:7 69:21<br>81:9 92:24<br>107:8 112:12<br>113:3 115:6<br>126:17 196:19<br>202:4 207:22<br><b>blank</b> 5:7 67:9<br>67:13 |
|--|--|---|---|---|

|                         |                         |                          |                        |                        |
|-------------------------|-------------------------|--------------------------|------------------------|------------------------|
| <b>blanked</b> 199:10   | <b>break</b> 22:14      | 112:3 115:4,5            | 179:12,15              | 85:5 90:6,9            |
| <b>BLM</b> 113:21       | 98:4 133:6              | 143:4,7 218:18           | <b>capabilities</b>    | 92:13 102:22           |
| <b>block</b> 23:4,5,6,7 | 183:17,19,19            | <b>buy</b> 84:2          | 150:5                  | 103:14 112:15          |
| 23:19 27:5,9            | 235:6,23 236:2          | <b>C</b>                 | <b>capacity</b> 8:24   | 112:24 116:4           |
| <b>blocks</b> 23:6      | <b>breaking</b> 235:8   | <b>C</b> 2:1,8 234:4,7   | 119:1,5 237:10         | 127:19 139:5           |
| <b>blossom</b> 177:5    | <b>briefly</b> 119:21   | <b>C-A-R-R-A-S...</b>    | <b>capital</b> 119:17  | 144:16 146:5           |
| <b>blossom-end</b>      | 226:14 229:10           | 100:11                   | <b>Capitol</b> 2:10    | 146:23 147:9           |
| 168:16                  | 232:25                  | <b>cabbage</b> 155:4     | <b>caption</b> 237:6   | 147:11 153:19          |
| <b>blow</b> 65:18 68:6  | <b>bring</b> 106:7      | 156:11                   | <b>care</b> 16:9 224:9 | 190:7 208:9            |
| 78:16 80:15             | 135:4 200:5             | <b>calculated</b> 72:19  | 224:10                 | 219:25 233:6           |
| 218:13                  | 223:2 231:18            | 81:21,22,24              | <b>career</b> 118:13   | <b>cases</b> 201:11    |
| <b>blowing</b> 81:10    | <b>bringing</b> 206:5,8 | <b>Calendar</b> 28:10    | 226:11                 | <b>cash</b> 143:24     |
| <b>blown</b> 218:16     | 228:9                   | <b>California</b> 2:10   | <b>Carlsbad</b> 72:25  | 161:11 163:3           |
| <b>blue</b> 26:14       | <b>broad</b> 45:5       | 42:3                     | <b>Carrasco</b> 4:6    | <b>casing</b> 172:24   |
| <b>board</b> 42:15      | <b>Broadway</b> 3:7     | <b>call</b> 13:21 30:22  | 99:6,7,10              | <b>categories</b>      |
| 58:2 113:14             | <b>broke</b> 21:14      | 30:24,25 31:4            | 100:11 101:17          | 100:23 101:7           |
| 130:1,5 131:2           | <b>brought</b> 108:5    | 33:14 43:13              | 101:19 102:13          | 117:23                 |
| 131:15,21               | 113:14                  | 48:11 49:20              | 105:5,16,20,23         | <b>categorize</b> 45:8 |
| 133:11 134:12           | <b>brush</b> 45:5       | 51:5,19 53:10            | 106:6,12,24            | <b>Category</b> 116:6  |
| 134:13 135:1,4          | <b>buffer</b> 172:6     | 68:14 99:2               | 109:8 114:25           | <b>Cattle</b> 106:20   |
| 142:7,16 143:4          | <b>buffering</b> 176:13 | 149:6 158:14             | 115:16,24              | 112:20                 |
| 219:4,5                 | <b>build</b> 189:13     | 161:11 162:19            | 116:13 117:7           | <b>cause</b> 205:25    |
| <b>Bobby</b> 143:20     | <b>building</b> 184:10  | 168:16 190:23            | 118:20,25              | 206:1 237:13           |
| <b>book</b> 99:23       | <b>built</b> 75:1       | 206:4 216:24             | 119:4,11,21            | <b>cement</b> 58:20    |
| 149:25                  | 120:11                  | 221:16 223:24            | 120:5,16               | <b>census</b> 231:8    |
| <b>border</b> 59:12     | <b>bull</b> 145:22      | 224:1                    | 121:18 123:11          | <b>centerpiece</b>     |
| <b>born</b> 71:20       | <b>Bureau</b> 113:20    | <b>called</b> 28:12      | 124:2,4,19             | 74:13                  |
| <b>borrowed</b>         | 124:14 131:7            | 43:15 55:25              | 125:6,13 126:5         | <b>central</b> 84:19   |
| 189:13                  | 134:3 185:11            | 60:7 65:25               | 126:14 127:25          | 236:1                  |
| <b>borrowers</b>        | <b>business</b> 23:24   | 108:14,22                | 129:3,19 130:4         | <b>ceramic</b> 28:14   |
| 137:14,19               | 23:25 24:18             | 133:22 149:8             | 131:13,24              | 28:16                  |
| <b>bottom</b> 18:22     | 26:6,8,23,24            | 162:5 180:21             | 132:10 133:9           | <b>certain</b> 102:25  |
| 27:18 28:14             | 30:6,7 36:3,9           | 207:4 227:15             | 134:2,16 135:9         | 120:9 165:17           |
| 33:18 43:2              | 44:23 60:13             | <b>calling</b> 27:17     | 135:22 136:2,8         | 166:7 168:13           |
| 61:25 70:24             | 103:12,12,13            | <b>calls</b> 99:6 126:11 | 136:13,17              | 168:19 177:2           |
| 196:13 197:9            | 136:21 137:23           | 128:4 130:20             | 138:21 139:3           | 179:9 184:9            |
| 230:22                  | 138:4 156:24            | 131:19 132:24            | 144:13 148:4           | <b>certainly</b> 6:13  |
| <b>bought</b> 19:17     | 156:25                  | 136:22 138:7             | <b>Carrasco's</b>      | 7:3 45:22 51:2         |
| 31:12 108:11            | <b>businesses</b> 101:2 | <b>camera</b> 99:5       | 103:6 105:12           | 78:3 101:17            |
| <b>boundary</b>         | 101:3,12 106:5          | 223:7                    | 147:1                  | 104:22,24              |
| 190:20 191:10           | 108:10,17,20            | <b>canal</b> 20:10       | <b>carriers</b> 161:24 | 121:14                 |
| 192:5                   | 110:12 118:15           | 26:15,18 27:16           | <b>carry</b> 14:25     | <b>CERTIFICATE</b>     |
| <b>Boylan</b> 5:23 6:6  | 125:15 126:7            | 166:10,17,18             | 161:23 162:15          | 237:1                  |
| 6:12,16                 | 138:3                   | 167:3,6                  | <b>carryover</b> 57:15 | <b>Certification</b>   |
| <b>brackish</b> 233:8   | <b>busy</b> 30:20       | <b>canals</b> 15:4       | 57:16,20,23            | 4:14 237:20            |
| <b>branch</b> 108:2,5   | 189:19                  | <b>cap</b> 58:18         | <b>case</b> 5:23 6:12  | <b>certifications</b>  |
| 109:1                   | <b>Butte</b> 111:4,24   |                          | 48:25 54:15            | 107:15                 |

|   |  |  |   |   |
|---|--|--|---|---|
| <b>certified</b> 1:13<br>107:19 237:3   | 165:7 168:8,12<br>168:17 174:17<br>174:22 177:1<br>188:22 205:5<br>206:2,11,12,12<br>209:15 221:13   | <b>client</b> 118:9<br><b>clients</b> 117:22<br>118:11 132:12<br>138:2 139:14  | <b>come</b> 25:4 45:23<br>49:14 56:4,7<br>59:5 98:5<br>119:23 162:1<br>173:2 183:20<br>184:24                   | <b>communicatio...</b><br>7:13 108:15   |
| <b>certify</b> 237:5,9<br>237:12  | <b>chiles</b> 204:8<br>206:10  | <b>climate</b> 169:8<br><b>close</b> 33:1 42:21<br>47:24 64:9<br>122:9 145:5<br>195:10 223:1   | <b>comes</b> 59:19<br>81:18   | <b>community</b><br>102:22 105:8<br>112:16 116:14<br>116:16 120:6,8<br>120:11,17<br>126:16 134:21 |
| <b>cetera</b> 27:7<br>82:23 90:8<br>100:3 225:2   | <b>chop</b> 154:10<br><b>CIR</b> 9:15 96:22  | <b>closer</b> 106:8<br><b>closing</b> 108:12<br><b>co-op</b> 117:11<br>119:14  | <b>comfortable</b><br>52:21<br><b>coming</b> 13:25<br>59:9 84:23<br>129:11 204:21                               | <b>Compact</b> 68:23<br>230:12  |
| <b>Chad</b> 3:6 5:16  | <b>circle</b> 230:13   | <b>codified</b> 50:25<br><b>Coleman</b> 223:19   | <b>commencing</b><br>1:12<br><b>comment</b> 84:13<br>103:20   | <b>companies</b><br>110:15  |
| <b>chad.wallace...</b><br>3:9   | <b>circumvented</b><br>71:15<br><b>circumventing</b><br>72:6   | <b>collapsed</b> 172:24<br><b>collapses</b> 21:11<br><b>collateral</b> 125:4<br>127:5,5  | <b>commercial</b><br>39:23 44:8<br>177:12   | <b>company</b> 37:1<br>108:11,13<br>110:22 117:18<br>127:3 152:5<br>234:18                        |
| <b>chance</b> 95:23<br>155:16   | <b>city</b> 56:3 59:7<br>226:3,24 227:2<br>229:3,13,16,20<br>229:21 230:8<br>230:14,23,24<br>231:6,10,15,20<br>231:24 232:13<br>232:19 234:13<br>235:16,18 | <b>college</b> 108:21<br>157:3<br><b>color</b> 26:15<br>177:3<br><b>Colorado</b> 1:6<br>2:5 3:5,7,8,14<br>5:3,16 98:20<br>149:4 223:21<br>226:23 | <b>commingle</b><br>19:14 20:7<br>64:16,20 65:22<br>66:9 83:17,23<br>83:25 84:4,6<br>93:14                      | <b>Company's</b><br>146:7   |
| <b>change</b> 135:17<br>168:23 169:7<br>183:17 207:10<br>207:16 223:8   | <b>civic</b> 112:11<br><b>civil</b> 112:15<br>226:17,18  | <b>combined</b> 18:11<br>19:22 22:13<br>69:23 146:19<br>179:19 193:20<br>198:8 208:8   | <b>commingled</b><br>19:22<br><b>Commission</b><br>114:3 141:7<br>230:12  | <b>compared</b> 83:17<br><b>compares</b> 36:1<br><b>comparison</b><br>83:15 92:19                 |
| <b>changed</b> 37:5<br>57:21 165:1<br>186:17 187:6  | <b>claim</b> 136:13<br><b>claims</b> 102:15,15   | <b>columns</b> 90:10<br>90:11  | <b>commissioner</b><br>114:2,9,15<br>140:10,20,23<br>140:24 141:9<br>141:16,23<br>142:6,8,15,16<br>142:20 143:4 | <b>compiled</b> 229:19  |
| <b>changes</b> 37:4,7<br>165:3 186:24   | <b>clarify</b> 118:24<br><b>clay</b> 8:15,21,22<br>169:4 173:6<br>197:1,5<br><b>CLC</b> 229:23   | <b>combine</b> 19:13<br>20:7 64:16,20<br>65:22 66:8<br>83:17,22,25<br>84:4,5 93:13<br>172:2  | <b>commissioners</b><br>141:20<br><b>committee</b><br>113:13,22   | <b>complaints</b><br>72:12  |
| <b>Changing</b><br>183:15   | <b>clean</b> 15:2<br>162:16  |  | <b>common</b> 14:15<br>14:18  | <b>complete</b> 10:3<br>27:22 237:7   |
| <b>chapter</b> 113:12<br>113:23   | <b>clear</b> 49:25<br>103:9,15 105:4<br>105:12 114:8<br>135:7 139:6,7<br>147:15 184:5  |  | <b>communication</b><br>100:2,4 150:4<br>150:5 225:1  | <b>completed</b> 10:18<br>27:21 67:6<br>89:23   |
| <b>character</b><br>126:23  | <b>clearly</b> 103:13<br>118:8 120:25<br>123:2 127:9<br>131:20   |  |   | <b>completely</b><br>71:16  |
| <b>charge</b> 205:8<br>227:18   | <b>Click</b> 158:7   |  |   | <b>compliance</b><br>180:25 183:3<br>212:9,15   |
| <b>chart</b> 31:23  |  |  |   | <b>compliant</b><br>180:23 182:20<br>182:22 229:22  |
| <b>Chavez</b> 6:24  |  |  |   | <b>comply</b> 212:19  |
| <b>cheaper</b> 20:14  |  |  |   | <b>compose</b> 153:10   |
| <b>check</b> 22:24<br>167:13 183:2  |  |  |   | <b>compound</b><br>133:5  |
| <b>checked</b> 7:25   |  |  |   | <b>comprise</b> 237:7   |
| <b>checking</b> 23:1  |  |  |   | <b>compromise</b><br>52:19  |
| <b>chief</b> 227:17   |  |  |   | <b>computer</b>   |
| <b>children</b> 156:16  |  |  |   |   |
| <b>chile</b> 125:23,24<br>152:4,14,15<br>155:3 156:11<br>156:23 159:14<br>159:20 160:2,3<br>161:12,15,15<br>162:8 164:1,2<br>164:8,10,12,13<br>164:15,17,18 |  |  |   |   |

|   |  |  |   |  |
|---|--|--|---|--|
| 108:15<br><b>computer-based</b><br>227:14<br><b>concern</b> 25:8<br>37:12 44:1,4<br>44:25 69:22<br>71:14 133:11<br><b>concerned</b> 75:14<br>150:10<br><b>concerns</b> 44:14<br>46:16,18 68:8<br>75:12<br><b>condition</b> 58:10<br>204:20<br><b>conditions</b> 115:1<br>120:8,10,12,19<br>121:13 127:16<br><b>conducted</b> 10:15<br>10:16<br><b>confident</b> 82:4<br><b>confirm</b> 66:12<br>73:19<br><b>confirming</b> 72:3<br><b>confirms</b> 65:24<br><b>confused</b> 107:14<br><b>conjunction</b><br>232:6<br><b>conjunctive</b><br>50:17,21 51:1<br>61:21 62:20<br>81:10<br><b>connection</b> 98:9<br><b>consecutive</b><br>161:3<br><b>consequences</b><br>41:8<br><b>conservation</b><br>229:23 232:16<br>233:4,16,17<br>234:14,15<br><b>consider</b> 34:6<br>126:20<br><b>considered</b><br>127:22 128:1<br><b>considers</b> 74:19<br><b>consistent</b> 10:21<br>11:1 29:4 | 61:22<br><b>consolidates</b><br>83:24<br><b>consolidations</b><br>108:24<br><b>constituency</b><br>142:3<br><b>consultant</b> 106:2<br>175:12 229:3<br><b>consultation</b><br>5:24<br><b>consulted</b> 37:1<br>84:20 186:21<br><b>consulting</b><br>101:24 139:13<br>232:4<br><b>consume</b> 13:15<br><b>consuming</b> 9:2<br><b>consumptive</b><br>9:15 10:5<br>48:19 86:4<br><b>contacted</b> 5:22<br>6:1 182:18,25<br><b>contacting</b> 6:9<br><b>contain</b> 233:18<br><b>contained</b><br>234:21 235:1,3<br>235:4<br><b>content</b> 167:14<br><b>contents</b> 232:23<br>232:25<br><b>context</b> 25:15<br>81:16<br><b>continue</b> 19:2<br>49:9,11 173:24<br>183:20 186:15<br>220:4,9 228:17<br><b>continued</b> 38:13<br>55:12<br><b>continues</b> 14:22<br><b>continuing</b><br>55:19 229:1<br><b>contract</b> 127:2<br>228:11,13,14<br><b>contracted</b><br>164:18<br><b>contracting</b> | 106:4<br><b>contracts</b> 228:10<br><b>control</b> 227:14<br><b>controlling</b><br>164:7<br><b>conversation</b><br>197:13<br><b>conversations</b><br>115:10 129:11<br><b>converting</b><br>205:10<br><b>coordinates</b><br>17:22<br><b>copy</b> 130:2<br><b>corn</b> 155:3<br>156:11 160:14<br>160:21 161:3<br>161:19 165:6<br><b>corner</b> 19:11<br>216:15<br><b>Corporation</b><br>108:14<br><b>Corralitos</b><br>230:22<br><b>correct</b> 22:17,18<br>33:9,13,17<br>43:17 46:8<br>48:15 53:8,25<br>61:20 62:2<br>64:14 66:19<br>68:11,12,18<br>70:4,19 71:9<br>73:17 75:9<br>76:10 77:7<br>80:9 82:10<br>84:7 85:23<br>86:6,21,24<br>87:3,25 88:1<br>90:21 92:5,20<br>94:24 95:1<br>96:24 110:14<br>111:22 114:3<br>115:21 127:23<br>127:24 139:9<br>139:10,11,15<br>139:17 140:10<br>142:8,17 143:8 | 144:18 145:16<br>145:17 153:19<br>192:10,23<br>193:14 196:23<br>197:17 198:11<br>199:15 200:1<br>202:16 204:10<br>204:24 206:9<br>208:14 209:3<br>209:21 210:10<br>211:20,21<br>212:12 217:13<br>217:17 220:10<br>221:11 224:13<br>226:5 228:20<br>230:4 232:21<br>234:23 237:7<br><b>corrected</b> 80:4<br><b>correctly</b> 48:1<br>68:24 91:23<br>140:19 229:25<br><b>cost</b> 12:7 16:25<br>17:2 18:23,24<br>34:25 35:2<br>39:17,19,20<br>163:18,21<br>173:12,15,18<br>203:18<br><b>costs</b> 34:23 35:3<br>39:3,6,13,14<br>59:15 157:21<br>171:19,24<br>172:8,11,11<br>203:9,9<br><b>cotton</b> 86:12,13<br>86:15,18,20<br>126:1 154:10<br>155:3 157:7<br>159:15,15,21<br>160:5 161:19<br>164:20,21,23<br>164:24 165:6<br><b>coughing</b> 216:1<br>216:18,25<br><b>counsel</b> 25:2<br>65:16 68:1<br>79:10 104:17 | 237:14<br><b>counterclaim</b><br>122:1<br><b>counts</b> 51:15<br><b>County</b> 108:13<br><b>couple</b> 38:19<br>78:17 99:17<br>108:3 113:24<br>129:4 138:25<br>143:5 144:9<br>149:21 157:3<br>183:24 196:18<br>205:22 220:15<br>224:16<br><b>course</b> 23:25<br>24:18 26:6,23<br>30:7 36:3,8<br>111:25 113:11<br>127:16 203:20<br><b>court</b> 1:1 44:11<br>44:18 48:4,9<br>48:13,18 56:8<br>70:6 71:16<br>82:23 87:16<br>94:1 96:2<br>102:21,23<br>134:18 151:17<br>151:24 152:13<br>165:22 181:7<br>230:7 237:23<br><b>Court's</b> 45:18<br><b>cover</b> 12:7<br>135:16 229:11<br>231:22<br><b>covered</b> 113:8<br><b>covers</b> 232:18<br><b>create</b> 30:3 79:7<br>158:21 168:15<br><b>created</b> 23:12<br>25:2,11 26:5<br>26:23 29:20,22<br>29:23,25 35:20<br>36:2,3 37:25<br><b>credit</b> 101:23<br>105:25 106:12<br>107:22,24,25<br>108:9,25 109:5 |
|---|--|--|---|--|

|   |   |  |  |   |
|---|---|--|--|---|
| 115:17,19,25<br>116:11,12,14<br>117:9,10,22<br>118:5,21 119:1<br>119:6,12,13<br>122:13 123:12<br>123:13 124:5,6<br>125:14 126:22<br>128:1 129:12<br>132:11,14<br>133:21 135:12<br>135:18 137:10<br>137:12,17,18<br>137:24 139:14<br>139:16,21<br>146:1,7 147:13<br>212:6<br><b>Credit's</b> 118:20<br>136:20,25<br>146:7,20,24<br>147:10<br><b>crisis</b> 79:6<br><b>criteria</b> 168:15<br><b>critical</b> 40:17<br>125:4,22<br>167:25 234:3<br><b>crop</b> 8:17,19,19<br>9:6,21 10:3,14<br>29:8 40:19,21<br>40:24,25 44:8<br>45:7 72:21<br>73:15 74:3<br>86:11 88:17<br>97:15 112:20<br>112:22 125:1<br>125:11 128:9<br>128:11 143:20<br>143:23 152:25<br>153:2,3,7,11<br>153:15,18<br>156:22 158:18<br>161:1,7,9,17<br>161:18,20<br>162:1,4,8<br>163:9,13,19<br>165:1,11,11,15<br>167:14 168:6,7 | 168:10,11,12<br>168:24 171:14<br>174:11,20<br>186:21 187:24<br>206:2<br><b>croppers</b> 153:12<br><b>cropping</b> 52:8,8<br>72:23<br><b>crops</b> 10:4,4<br>16:7,9 45:3<br>48:20 51:12<br>52:7 54:25<br>112:9 125:21<br>138:13,14<br>143:12 153:13<br>154:13 155:1<br>156:9,10 159:4<br>159:6,7,12,17<br>160:1,12,15,17<br>160:23 161:11<br>161:21,24<br>162:13,15,20<br>163:1,23 164:3<br>164:5 165:4<br>167:22,24<br>169:9 171:7<br>174:9,10,17<br>175:3,4 176:24<br>177:14 178:7<br>178:10,12,16<br>181:18 188:3,4<br>188:6,24<br>194:19 204:9<br>220:5<br><b>cross</b> 45:17,19<br>46:4,8 133:5<br><b>cross-examina...</b><br>4:4,5,7,8,10,10<br>6:23 61:1<br>83:10 139:1<br>144:11 190:3<br>219:22 225:16<br><b>crosses</b> 216:16<br><b>CRR</b> 237:19<br><b>Cruces</b> 56:3<br>108:3,23<br>109:23 110:19 | 110:20 112:17<br>151:18,23<br>173:7 226:3,25<br>227:3 229:2<br>230:8,14<br>231:10,20<br>235:16<br><b>CSR</b> 237:19<br><b>cultivate</b> 86:23<br><b>cumulative</b><br>185:16,24<br><b>current</b> 72:22<br>82:24 105:23<br>114:7 164:15<br>164:21 179:15<br><b>currently</b> 83:18<br>139:11,12<br>151:17 164:22<br>202:1 229:3<br><b>curtailed</b> 137:6<br>211:24 213:9<br><b>customers</b><br>168:18 231:13<br>231:15<br><b>cut</b> 31:17 113:2<br>189:4,10,15<br><b>CV</b> 107:3<br>110:11 112:10<br>115:17 122:17<br><b>cycle</b> 118:2<br><b>cycles</b> 10:3,14<br><hr/> <b>D</b> <hr/> <b>d</b> 81:8 117:23<br><b>D'Antonio</b> 46:16<br>70:17 71:4<br>72:11 75:18<br>76:8 77:13<br>78:7<br><b>D'Antonio's</b><br>72:16 73:12<br><b>dad</b> 152:6<br>154:17,25<br>155:1,5,9<br>205:8 207:9,12<br>207:14,17<br>219:4 | <b>dairy</b> 118:16<br><b>Dalrymple</b> 2:15<br>4:7 98:17,18<br>99:3,4 102:11<br>104:5 105:3,15<br>105:19 106:9<br>110:3,10,11<br>113:4,6 115:22<br>115:24 116:5<br>116:12,20<br>117:6,7 119:2<br>119:4,9,11<br>120:2,4,25<br>121:13,16<br>122:3,21 123:8<br>123:10,11,22<br>123:25 124:1<br>124:19 126:14<br>127:21 129:2,3<br>129:19 131:3<br>131:13,24<br>133:7,9 135:22<br>136:2,5,24<br>137:11,16<br>138:21 141:5<br>142:9,18,23<br>145:6 146:9,14<br>146:25 147:23<br>147:25 148:9<br>148:10<br><b>dam</b> 58:1<br><b>damages</b> 101:8<br>101:14<br><b>Danny</b> 6:23<br><b>data</b> 37:15 81:3<br>81:3 91:24<br>229:19<br><b>date</b> 16:8 19:9<br>27:9,25 28:4<br>32:21 33:7,11<br>33:24 40:22<br>55:22 64:6<br>65:21 139:24<br>180:12 182:8<br>200:15 237:20<br><b>dated</b> 68:5 214:6<br>218:7 | <b>dates</b> 23:17,18<br>27:8,11 38:21<br>107:13 155:17<br><b>daughter</b> 156:20<br><b>David</b> 4:3 7:16<br>78:20,21 199:9<br><b>day</b> 14:12 15:4<br>44:11,18 57:24<br>70:6 71:15<br>143:21 184:9<br>189:20 206:21<br>237:17<br><b>days</b> 14:14<br>40:22 167:22<br><b>de</b> 2:16 3:2<br>110:21<br><b>dead</b> 41:17<br>123:2<br><b>deal</b> 44:17,19<br>51:12 54:14<br><b>dealing</b> 76:7,15<br><b>death</b> 16:20<br>40:11 41:6<br><b>debt</b> 16:23<br><b>decade</b> 205:9<br><b>decades</b> 88:23<br><b>December</b> 6:1<br>31:23 90:2<br>160:8 182:9<br>214:7 237:17<br><b>decent</b> 183:17<br>217:10<br><b>decide</b> 28:9 34:3<br>126:20 163:1<br>166:2,4 167:11<br>169:9<br><b>decided</b> 152:8<br>157:4<br><b>deciding</b> 135:3<br><b>decision</b> 46:2<br>137:5<br><b>decisions</b> 120:13<br>166:4<br><b>dedicated</b> 164:5<br><b>deeded</b> 31:9,11<br>32:23<br><b>deep</b> 16:19 17:1 |
|---|---|--|--|---|

|                         |                         |                         |                         |                          |
|-------------------------|-------------------------|-------------------------|-------------------------|--------------------------|
| 17:20 28:13             | 144:6 148:17            | 150:12,13,14            | 233:8                   | 145:22 227:12            |
| 63:19,21 65:4           | 148:18,18               | 150:15 158:7            | <b>describe</b> 17:20   | 229:15 231:17            |
| 65:4,4,5,5,7,12         | 151:1,6,8               | 158:16 215:20           | 55:16 101:22            | 231:19 232:10            |
| 67:2,3,16               | 185:16,19               | 215:21 225:15           | 115:25 117:8            | 233:5,12,22              |
| 145:2 172:25            | 189:22,24               | 229:8,8 230:6           | 118:9 119:21            | 235:15                   |
| 173:5,19 195:1          | 219:19,20,23            | 230:9                   | 157:14 161:9            | <b>devices</b> 100:3     |
| 233:8                   | 219:24 220:12           | <b>demonstratives</b>   | 162:3 166:13            | 150:4 225:1              |
| <b>deeper</b> 65:11     | 222:19,20               | 64:11                   | 169:18 171:19           | <b>Dexter</b> 124:14     |
| 66:4,14 67:7            | 223:12                  | <b>denied</b> 211:15    | 176:8,16,23             | <b>dialogue</b> 46:20    |
| 173:3,8                 | <b>del</b> 230:19 234:6 | <b>dent</b> 123:18      | 178:25 188:15           | <b>die</b> 40:12,13      |
| <b>defect</b> 177:10    | <b>deliver</b> 75:23    | <b>Denver</b> 2:5 3:8   | 229:10 232:25           | 41:7 90:13               |
| <b>DEFENDANT</b>        | 166:8 192:4             | 3:14                    | <b>described</b>        | 221:15                   |
| 2:13 3:5                | 201:12                  | <b>deny</b> 73:19       | 100:21 131:15           | <b>died</b> 16:19        |
| <b>Defendants</b> 1:7   | <b>delivered</b> 77:6   | <b>department</b> 3:7   | <b>describes</b> 231:22 | <b>difference</b> 10:10  |
| <b>Defense</b> 108:16   | 112:8 132:17            | 3:13 61:5               | 233:3 234:10            | 59:25 67:13              |
| <b>defenses</b> 122:4   | 134:1 168:19            | 108:16 144:15           | <b>describing</b> 71:4  | 88:19 131:18             |
| <b>deficit</b> 41:4     | <b>deliveries</b>       | 190:6 227:3,6           | 120:25                  | 133:20 166:16            |
| <b>defined</b> 67:1     | 202:12                  | 227:7,17,22             | <b>description</b>      | 199:12                   |
| 85:5 93:19              | <b>delivering</b> 77:2  | 228:24 229:2            | 11:18,23 17:23          | <b>differences</b>       |
| <b>definitely</b> 16:23 | 169:23                  | 231:10                  | 233:11 234:5            | 132:20                   |
| 169:2 171:18            | <b>delivery</b> 10:7    | <b>depend</b> 173:18    | <b>desert</b> 110:20    | <b>different</b> 8:25    |
| 174:24 189:17           | 48:19 51:7              | <b>dependent</b>        | 147:19                  | 10:24 24:21,25           |
| <b>definition</b> 66:11 | 68:22 72:19             | 102:24 127:6            | <b>design</b> 178:5     | 49:25 67:24              |
| 66:13 202:3             | 73:3,9 74:17            | 137:9 163:4             | 227:9,10,10,16          | 91:3 98:12               |
| <b>deformation</b>      | 75:8,10 77:12           | 164:19 194:15           | <b>despite</b> 26:7     | 110:15 130:17            |
| 168:16                  | 78:6 80:25              | <b>depending</b> 12:14  | <b>destroy</b> 79:8     | 130:18 131:10            |
| <b>dehydration</b>      | 81:22 111:11            | 20:15 29:7              | <b>detail</b> 233:19    | 133:12,25                |
| 125:23                  | 136:11 145:19           | 39:16 155:12            | <b>detailed</b> 233:11  | 134:1 143:6              |
| <b>Deitchman</b> 2:9    | <b>demand</b> 164:1     | 161:17 165:3            | <b>details</b> 93:3     | 153:13 158:25            |
| 4:7,10 98:13            | 164:19 233:13           | 178:5                   | 234:13                  | 159:2 160:2              |
| 98:14 100:14            | 233:13,14               | <b>depends</b> 8:16     | <b>deteriorate</b>      | 165:4 166:18             |
| 100:19 103:19           | <b>Deming</b> 152:12    | 162:4 167:2             | 171:23                  | 166:19,23,24             |
| 103:22 110:6            | 152:21 158:4            | 168:6 202:2             | <b>deteriorated</b>     | 167:5 173:6              |
| 116:2,8,11              | 190:14 204:16           | <b>depletion</b> 101:1  | 172:23                  | 177:3 181:16             |
| 118:23 119:25           | <b>Demo</b> 115:23      | 101:11                  | <b>determine</b> 17:16  | 187:13 233:6             |
| 121:2,9,11              | 117:2 216:4             | <b>depletions</b> 54:3  | 28:22 48:19             | <b>differentiate</b>     |
| 122:8 123:20            | 218:5                   | <b>deployments</b>      | <b>determined</b>       | 132:19                   |
| 124:18 126:9            | <b>demonstrative</b>    | 108:17                  | 31:16                   | <b>difficult</b> 184:25  |
| 126:11 127:11           | 8:8,9 11:8              | <b>deposition</b> 207:9 | <b>devastating</b>      | 189:11                   |
| 128:4 129:17            | 12:20 18:20,21          | 207:14                  | 58:11                   | <b>difficulties</b> 7:25 |
| 130:20 131:19           | 19:4 23:2               | <b>depth</b> 65:9       | <b>develop</b> 15:19    | <b>Diocese</b> 112:17    |
| 132:24 135:6            | 25:15,17,19,24          | 195:5,8,13              | 21:21                   | <b>dire</b> 24:13 36:15  |
| 136:22 137:2            | 29:9,17 35:5            | 196:2,3,10,21           | <b>developed</b> 55:21  | <b>direct</b> 4:4,7,9,12 |
| 138:6,23,24             | 35:14 37:17             | 197:3,4                 | 74:19 199:21            | 7:19 45:19               |
| 139:2,4 141:8           | 39:10,22 64:23          | <b>depths</b> 64:21     | <b>developing</b>       | 46:6 105:18              |
| 141:12 142:13           | 82:8 106:23             | <b>deriving</b> 73:16   | 215:13                  | 115:10 151:14            |
| 142:21 143:5            | 110:4 140:4             | <b>desalination</b>     | <b>development</b>      | 199:17 212:23            |

|   |  |  |  |  |
|---|--|--|--|--|
| 219:1 225:23<br><b>direction</b> 25:2<br>25:11<br><b>directly</b> 126:17<br>129:21<br><b>director</b> 70:13<br>78:24 227:6,21<br>227:25 228:17<br><b>directors</b> 130:1<br>130:5<br><b>disagreeing</b> 45:9<br><b>disclose</b> 121:3<br><b>disclosed</b> 101:4<br>101:5,6,15,17<br>103:25 121:1<br>121:15 139:8<br><b>disclosures</b><br>135:18<br><b>discount</b> 177:12<br><b>discovered</b><br>15:23<br><b>discuss</b> 56:17<br>105:10 119:6<br><b>discussed</b> 40:18<br>65:16 78:14<br>109:9 133:10<br>234:18<br><b>discusses</b> 51:20<br><b>discussing</b> 64:19<br>93:14 129:20<br>229:18<br><b>discussion</b> 95:14<br>132:11 229:23<br><b>discussions</b> 6:16<br>90:6<br><b>disease</b> 161:22<br>161:25,25<br>162:2,5,7,11<br>162:15 221:15<br><b>diseases</b> 161:23<br>162:8 164:7<br><b>dispute</b> 128:25<br><b>disputing</b><br>186:19<br><b>dissolved</b> 175:15<br>175:18 217:22<br><b>distance</b> 44:21 | 216:6<br><b>district</b> 12:8,12<br>16:6 20:11,13<br>20:14 38:21,24<br>57:17,17 58:20<br>59:20,21 62:7<br>81:20 111:4,24<br>112:4 115:5<br>124:12 131:8<br>132:6 133:24<br>143:4,8 218:18<br><b>District-specific</b><br>214:21 215:1,7<br>215:15<br><b>districts</b> 59:4<br>63:1 76:24<br>95:16,17<br>130:17 131:7,8<br>131:11,18<br>132:18 133:24<br>134:1<br><b>ditch</b> 14:24,25<br><b>ditches</b> 15:1<br>58:21<br><b>diverse</b> 153:2<br><b>diversified</b> 49:11<br>112:20,22,24<br>152:25 153:2,7<br>153:11,14,18<br>186:21<br><b>diversion</b> 211:22<br>212:3 213:10<br><b>diversions</b><br>229:19<br><b>diversity</b> 142:1<br><b>divert</b> 166:20<br>181:9 208:7,15<br>209:16 211:24<br>211:25<br><b>diverted</b> 180:17<br>181:10,10<br>212:15<br><b>diverting</b> 209:14<br><b>divide</b> 59:19<br><b>Docket</b> 100:22<br><b>Doctor</b> 226:8<br><b>document</b> 11:15 | 23:10,12,21<br>24:2,18 25:1,5<br>29:17,20 30:6<br>30:9 33:14<br>35:7,12,13,20<br>36:2,5 42:23<br>45:15 46:13,19<br>48:7 50:4,12<br>72:7 80:11<br>89:17 158:17<br>158:21 180:10<br>180:12,14<br>182:6,8,10,12<br>182:13,17<br>231:21,22<br>232:14,17,24<br>233:20<br><b>documents</b> 24:6<br>24:20,23 95:24<br>99:22 149:24<br>224:20<br><b>doing</b> 23:16<br>27:22 113:19<br>154:14 194:21<br><b>dollar</b> 12:13<br><b>dollars</b> 16:24<br><b>domestic</b> 59:10<br><b>Dona</b> 108:13<br>110:21<br><b>double</b> 52:8<br>107:11 191:15<br>191:18<br><b>Dr</b> 55:8 94:23<br>224:1,2 225:25<br><b>drafted</b> 68:17<br><b>drain</b> 207:3,4,5<br>207:6,7<br><b>drains</b> 206:25<br>207:3,11,16,20<br><b>Draper</b> 3:1,1,1<br>4:12 223:11,16<br>223:18,20,24<br>223:25 224:7<br>225:19,20,24<br>235:5,10,14,22<br>236:3<br><b>DRAWER</b> 2:21 | <b>drier</b> 28:18<br><b>dries</b> 28:15<br><b>drill</b> 16:12,25<br>21:23 67:15,22<br>129:12 173:2<br>173:13,15,21<br>179:4<br><b>drilled</b> 15:14,21<br>15:23 16:2,4<br>17:1 21:12<br>65:19,21 67:1<br>155:16,18,20<br>172:16,25<br>173:9,10,11<br>193:23,24,25<br><b>drilling</b> 67:5,11<br>173:19<br><b>drip</b> 166:9,12<br>168:8 171:25<br>176:1,9,11,22<br>178:3 204:23<br>205:1,10,11,14<br>205:15,16<br>221:19 222:1,3<br>222:6,9<br><b>drive</b> 7:1,3<br>128:13 188:25<br><b>driver</b> 154:12<br><b>driving</b> 188:18<br><b>drone</b> 6:24<br><b>drop</b> 34:25<br>66:23 202:12<br><b>drought</b> 38:12<br>56:5 59:3,3<br>76:3,6 132:22<br>201:21 202:1,3<br>202:6,7,23<br>203:6,10,20<br>214:8,14 215:3<br>215:9<br><b>drum</b> 57:22<br><b>dry</b> 16:5 28:2,5<br><b>Dubois</b> 3:12 4:8<br>4:10 98:24,25<br>102:2,3 110:7<br>116:10,19,23<br>116:24 120:21 | 120:24 122:8<br>122:22 123:16<br>124:17 126:10<br>127:8 128:17<br>129:15 130:22<br>133:1 136:1<br>137:15 138:5,7<br>144:8,9,12,14<br>145:11 146:13<br>146:16,22<br>147:3,8,21<br>148:20,22<br>189:24 190:1,2<br>190:4,5 195:17<br>195:21 196:8<br>196:15,20<br>199:18,23<br>203:2,4,13,21<br>215:19,21<br>218:4,6,13,15<br>219:6,15<br>222:14,16<br><b>due</b> 169:8<br>203:10<br><b>duly</b> 7:17 105:17<br>151:13 225:22<br><b>DUNN</b> 2:4,9<br><b>durable</b> 206:20<br>206:22<br><b>duties</b> 109:3,8<br>109:11 227:24 |
| <hr/>   |  |  |  |  |
| <b>E</b>  |  |  |  |  |
| <hr/>   |  |  |  |  |
| <b>E</b> 2:1,1,1,1,20   |  |  |  |  |
| <b>e-mail</b> 6:9 78:16   |  |  |  |  |
| 100:4 150:6   |  |  |  |  |
| <b>earlier</b> 7:25   |  |  |  |  |
| 13:14 40:18   |  |  |  |  |
| 54:4 70:10  |  |  |  |  |
| 91:4 109:9  |  |  |  |  |
| 121:10 140:6  |  |  |  |  |
| 163:6 168:21  |  |  |  |  |
| 182:1 188:3   |  |  |  |  |
| 197:15 199:8  |  |  |  |  |
| 202:18 210:3  |  |  |  |  |
| 221:9 234:19  |  |  |  |  |
| <b>earliest</b> 60:3  |  |  |  |  |

|   |   |   |  |   |
|---|---|---|--|---|
| <b>early</b> 43:8 64:3,6<br>113:13 154:20   | 14:24 74:19<br>75:1 85:11                             | <b>Elephant</b> 111:4<br>111:24 112:3   | 75:17 76:13<br>77:11 78:4,18   | 199:23  |
| <b>easier</b> 20:12<br>54:16  | 191:23 218:18   | 115:4,4 143:4<br>143:7 218:18   | 79:4,14 80:17<br>84:16 93:19,23  | <b>envelope</b> 25:14   |
| <b>east</b> 216:8,9,10<br>216:11  | <b>economic</b> 101:2<br>101:21 121:4<br>122:15 128:2 | <b>eliminate</b> 161:25<br>162:11,18  | 95:8 96:1<br>111:19 130:13   | <b>environment</b><br>120:20  |
| <b>easy</b> 8:4 88:12   | <b>economics</b><br>107:12 120:6                      | <b>emergency</b><br>201:11  | 130:24 178:24<br>179:1,11 180:3  | <b>environmental</b><br>29:7 232:4  |
| <b>EBID</b> 11:11,18<br>11:24 12:2,24<br>13:1,4,7,25<br>14:5,16,20,22<br>15:11 18:18<br>20:19,21 22:13<br>26:19 27:13<br>31:9,13,14,20<br>31:24,25 32:12<br>32:25 39:14,17<br>39:18 49:13<br>51:6,12 52:20<br>56:13,16,19,22<br>57:22 73:15,17<br>74:13,15,16,23<br>74:24 85:5,6,8<br>85:18 92:2,9<br>92:23 95:5,8<br>95:11 111:22<br>111:23 132:1<br>134:3 142:7,16<br>143:10 146:1,2<br>146:6,8 147:16<br>153:24 157:19<br>158:8 165:25<br>165:25 166:7<br>169:13,16,19<br>169:21,22,22<br>170:6,9,12,14<br>171:5 179:17<br>179:18,18<br>185:11,14<br>186:2,8,13<br>190:18,20,24<br>191:1,2,10,12<br>191:15,17<br>192:4,8,21<br>201:3,11 218:7<br>218:10 229:24 | <b>economist</b><br>101:20                            | <b>emphasized</b><br>15:19  | 180:16,20,21<br>182:14,17<br>200:22 211:9<br>211:15 212:21<br>226:22 227:10<br>227:18 229:21<br>232:12 | <b>EP</b> 14:10,17<br>132:6 133:23<br>146:1 186:13                            |
| <b>EBID's</b> 11:16   | <b>economists</b><br>122:11,15                        | <b>employ</b> 187:21<br>237:12  | 211:15 212:21<br>226:22 227:10<br>227:18 229:21<br>232:12  | <b>EP1</b> 14:21 18:18<br>56:13 57:9<br>59:20 95:21<br>146:23 147:9<br>185:11 |
|   | <b>economy</b> 119:16<br>119:20 138:15<br>138:16      | <b>employed</b><br>122:13   | <b>employee</b> 119:6<br>135:11 227:3<br>237:10  | <b>equipment</b><br>12:10,11<br>117:15 118:3<br>189:1,14                      |
|   | <b>edge</b> 206:25<br>216:11                          | <b>employees</b> 12:9<br>14:24 159:2<br>187:23,24,25<br>188:8,11,17<br>189:16   | <b>engineer's</b> 17:14<br>72:2,4 75:3,15<br>182:18 210:23<br>211:3                                    | <b>equitable</b> 122:5<br><b>especially</b> 34:8<br>37:15 84:1<br>164:23      |
|   | <b>education</b> 107:4<br>107:9 226:14                | <b>employment</b><br>107:4 227:5  | <b>engineering</b><br>124:13 130:24<br>226:17,18,19<br>227:18  | <b>essentially</b> 6:1,4<br>89:6 208:2<br>216:11                              |
|   | <b>educational</b><br>113:13,16                       | <b>end-of-the-year</b><br>61:18   | <b>engineers</b><br>124:12   | <b>establish</b> 96:4<br>102:17 116:13<br>120:5,16<br>121:23 200:10<br>200:12 |
|   | <b>effect</b> 7:14 83:1<br>126:8 186:4                | <b>ended</b> 10:5 47:2  | <b>Enormous</b> 94:18  | <b>established</b><br>50:13 142:19<br>161:1                                   |
|   | <b>effective</b> 163:18<br>163:21                     | <b>energy</b> 34:25<br>35:2,3,16 39:3<br>39:6,17,20<br>157:21 171:24<br>172:11 228:13<br>228:14   | <b>ensure</b> 68:22<br>71:6,7,25<br>75:22 77:12<br>78:6  | <b>establishment</b><br>52:16   |
|   | <b>effectively</b> 54:14<br>209:19                    | <b>engage</b> 47:4  | <b>enter</b> 5:5 6:2<br>46:20 95:3<br>98:10  | <b>estate</b> 108:12<br>109:6,15<br>110:17,21<br>117:14,24,25                 |
|   | <b>effects</b> 41:11<br>132:13 162:7                  | <b>engagement</b><br>56:7   | <b>entered</b> 32:2<br>48:4,18 56:22<br>94:3 219:11  | <b>et</b> 27:7 82:23<br>90:8 100:3<br>225:2                                   |
|   | <b>efficient</b> 21:24<br>34:16 172:3<br>181:18       | <b>engineer</b> 17:4,7<br>17:9 19:10<br>20:1 21:2 22:4<br>22:23 31:11,16<br>43:9 46:15,23<br>47:5 49:12<br>50:11 52:24<br>62:7 68:18<br>69:16,17 70:17<br>71:24 73:13,20<br>74:1,11 75:11 | <b>entire</b> 40:25<br>102:24 120:10<br>120:17 123:1<br>137:21 191:19<br>198:22 203:21<br>208:10       | <b>evaluated</b> 94:16<br>124:21,22   |
|   | <b>efficiently</b> 54:9<br>181:23,25<br>217:16        |   | <b>entities</b> 212:24<br>213:6  | <b>evening</b> 43:8<br>235:9,25   |
|   | <b>efforts</b> 44:17<br>232:17                        |   | <b>entitled</b> 88:19<br>102:18 120:16<br>191:2 192:3  | <b>event</b> 56:5   |
|   | <b>either</b> 34:12<br>51:13 127:2<br>208:1           |   |  |   |
|   | <b>El</b> 58:18                                       |   |  |   |
|   | <b>elaborate</b> 109:10                               |   |  |   |
|   | <b>electric</b> 18:24<br>35:18 36:24<br>37:1,4,13,18  |   |  |   |
|   | <b>elements</b> 29:7<br>69:18,20                      |   |  |   |



|   |   |   |  |  |
|---|---|---|--|--|
| <b>eventually</b><br>108:24 154:14  | 194:2 198:11<br>223:10 225:12   | 203:5 212:4,14<br>229:11  | 59:17 116:17<br>123:12 124:5<br>124:20 130:19<br>165:22  | 126:22 127:9<br>127:13 135:14  |
| <b>everybody</b> 45:6<br>45:8,11 115:3<br>183:10 236:6  | <b>excused</b> 98:3<br>148:3 222:23   | <b>expectations</b><br>120:18   | <b>explained</b> 79:6<br>89:4  | <b>facts</b> 142:18<br>237:5   |
| <b>evidence</b> 32:2<br>37:24 47:12<br>49:7 52:23<br>53:5,7 79:16<br>94:2,4,15<br>95:25 96:21<br>101:14 102:13<br>200:4 | <b>executive</b> 233:2<br><b>exercise</b> 232:11<br><b>exhibit</b> 7:1 11:9<br>11:13,14 12:5<br>12:21 18:20<br>19:4 23:3,8<br>24:10 25:17<br>26:25 29:10,15<br>29:15,18 35:4<br>35:6 36:12<br>38:5,8 39:11<br>39:22 42:22<br>45:13,18,23<br>46:7 48:7<br>49:19 52:14<br>53:9 67:25<br>70:8,14,22,24<br>71:1 78:12<br>81:6 89:14<br>99:22 110:9<br>116:9 149:25<br>150:16,17,18<br>150:22,23<br>158:7,16 180:7<br>180:9 182:4<br>210:3 213:12<br>218:4,5 224:22<br>224:23 225:15<br>225:15,18<br>226:7 231:18<br>232:1 233:25<br>235:2,3,4 | <b>expense</b> 205:18<br><b>expenses</b> 177:21<br><b>expensive</b> 60:1<br>162:20 189:9<br><b>experience</b><br>10:19 14:15<br>28:23 40:2,7<br>40:15 41:1,3<br>103:17,17<br>104:19 105:7<br>116:15 119:7<br>121:6 123:18<br>123:24 127:13<br>132:20 154:7<br>167:12 226:15<br>229:13<br><b>experimenting</b><br>205:11<br><b>expert</b> 25:9<br>26:12 55:5<br>101:5,5,6,7,16<br>101:17 103:7,7<br>103:15,25<br>104:18,24,25<br>105:5,13<br>120:25 121:3,7<br>121:8,9,17,18<br>122:10,10,18<br>122:20 123:2<br>123:17 126:11<br>127:10 128:5<br>128:18 130:21<br>131:20,20<br>132:25 136:23<br>138:7 139:8<br><b>expertise</b> 204:12<br><b>experts</b> 104:19<br><b>Expiration</b><br>237:20<br><b>explain</b> 27:2<br>30:19 34:3<br>38:7 44:4<br>56:23 57:6 | <b>extension</b> 109:4<br><b>extensive</b> 116:15<br><b>extent</b> 220:5<br><b>extra</b> 73:14 74:2<br><b>extracted</b> 230:15<br><b>extrapolate</b><br>91:16<br><b>extreme</b> 56:5<br>204:9<br><b>eyes</b> 214:9             | <b>ailing</b> 139:13<br><b>fails</b> 21:10<br><b>failure</b> 17:13<br><b>failures</b> 113:15<br><b>fair</b> 45:19 46:19<br>59:24 63:14,15<br>71:8 74:17<br>112:19 154:3,4<br>202:14 208:4<br>213:8 232:18<br><b>fairly</b> 134:7<br>183:17<br><b>fall</b> 40:16,17<br>161:2<br><b>fallow</b> 73:16<br>162:23 163:12<br>163:18 221:7<br><b>fallowed</b> 74:7<br>163:11<br><b>fallowing</b> 55:23<br>101:1,10 163:7<br>163:7,8 178:15<br>215:12,13<br><b>familiar</b> 17:6<br>19:25 20:3<br>37:8 50:17<br>53:13 85:6<br>129:6,8,10,20<br>161:6 170:19<br>174:2 206:21<br>213:5<br><b>family</b> 16:11<br>106:16 154:10<br><b>family-run</b><br>156:24,25<br><b>far</b> 30:21 32:6<br>36:20 84:17,18<br>144:23 150:10<br>191:5,6 199:14<br>201:5 215:14<br>215:17 223:21<br><b>farm</b> 8:6 10:7<br>15:14,18,24 |
| <b>exact</b> 10:8 30:1<br>213:21  |   |   |  |  |
| <b>exactly</b> 14:12<br>24:4 26:10<br>81:15 82:21<br>114:16 121:9<br>210:20   |   |   |  |  |
| <b>examination</b> 4:4<br>4:5,7,9,11,12<br>5:21 7:11,19<br>93:11 105:18<br>151:14 220:17<br>223:4 225:23                |   |   |  |  |
| <b>example</b> 13:17<br>20:17 27:15<br>53:17 86:12<br>92:11 125:19<br>165:21  |   |   |  |  |
| <b>examples</b> 125:18<br>130:15 131:5,9  |   |   |  |  |
| <b>exceed</b> 89:8<br>208:11 211:22   |   |   |  |  |
| <b>exceeded</b> 212:3   |   |   |  |  |
| <b>exceeds</b> 82:11  |   |   |  |  |
| <b>exception</b> 6:5  |   |   |  |  |
| <b>excess</b> 52:16<br>218:1  |   |   |  |  |
| <b>exchanged</b><br>78:18   |   |   |  |  |
| <b>exclude</b> 101:13   |   |   |  |  |
| <b>excuse</b> 19:6<br>45:16 82:3<br>87:13 91:5<br>106:6 192:13  |   |   |  |  |
|   | <b>existed</b> 210:9<br><b>existing</b> 65:23<br>234:10<br><b>expect</b> 6:3 102:5  |   |  |  |
|   |   |   | <b>F</b>   |  |
|   |   |   | <b>F-R-A-N-Z-O...</b><br>149:19  |  |
|   |   |   | <b>facilities</b> 125:25<br>126:1  |  |
|   |   |   | <b>facility</b> 152:17<br>154:13 156:20<br>163:25 188:1<br>188:24 189:8<br>189:13 228:7  |  |
|   |   |   | <b>fact</b> 6:10 25:11<br>26:11 57:15<br>82:25 87:9<br>102:14 103:3,9<br>104:20 105:1<br>120:5,17<br>129:14 131:17<br>133:16<br><b>factor</b> 8:17<br>126:23 135:3<br><b>factored</b> 123:13<br>124:6<br><b>factors</b> 124:10 |  |

|                |                       |                       |                          |                          |
|----------------|-----------------------|-----------------------|--------------------------|--------------------------|
| 16:4,16 19:18  | 152:12,15,23          | 23:17,21 29:23        | 181:24                   | 158:22 160:18            |
| 19:21,23 20:11 | 154:9,9,17            | 36:5 37:25            | <b>father</b> 15:15      | 162:17 174:12            |
| 20:18,20,20    | 155:13,13,21          | 52:21 101:2,3         | 16:15,18 97:11           | 181:24 187:25            |
| 23:6 27:14,14  | 156:1,4,17            | 101:11 103:13         | 218:23                   | 188:22 205:14            |
| 31:1,3,12,25   | 157:5,10,23           | 110:24 118:6,6        | <b>fault</b> 21:12       | 207:1,1 230:25           |
| 32:1 44:7      | 158:2,4,13,14         | 118:18,21             | <b>FDR</b> 10:8 22:11    | <b>fight</b> 95:11       |
| 48:19 53:18,18 | 158:18,19             | 119:13,15             | 32:1 51:14               | <b>fighting</b> 56:6     |
| 53:18,18,19,20 | 159:1 161:13          | 125:7 126:7,16        | 89:11 97:6               | <b>figure</b> 82:1       |
| 53:21 58:13    | 161:16 166:9          | 126:18,19             | <b>FDRs</b> 22:12        | 212:18 230:16            |
| 61:13 63:17,20 | 166:19 173:10         | 133:4 138:2,4         | <b>Fe</b> 2:16,21 3:2    | <b>figures</b> 61:19     |
| 72:19 73:8     | 175:23 177:18         | 152:1,3,11            | 67:6                     | 233:18                   |
| 75:8,10 80:25  | 177:18 178:4,5        | 153:11,15             | <b>feasibility</b> 127:3 | <b>file</b> 84:5         |
| 81:22 84:2     | 181:1,15,20           | 154:6,7,16,23         | <b>feasible</b> 124:25   | <b>filed</b> 48:13 58:4  |
| 85:13,13,15,23 | 187:17,19,22          | 156:6 157:2,5         | 125:11                   | 58:9 84:8,9              |
| 86:7,8,8,9,15  | 188:16 205:19         | 158:6 173:24          | <b>feature</b> 53:10     | <b>files</b> 24:19       |
| 86:16,18 87:2  | 208:3 209:23          | 177:22                | <b>February</b> 106:1    | <b>filing</b> 134:8      |
| 87:4,25 88:15  | 216:5,5,6             | <b>farmland</b> 72:24 | 125:6 139:16             | <b>fill</b> 28:14 42:8   |
| 88:18,24 89:7  | 218:2 221:2           | 110:14,18             | <b>Federal</b> 108:22    | 210:24 211:2             |
| 89:21 91:5     | <b>farmable</b> 159:9 | <b>farms</b> 13:24    | 124:11                   | 211:12                   |
| 92:23 96:8     | <b>farmed</b> 156:5   | 15:12 18:11           | <b>fee</b> 169:22        | <b>final</b> 48:8 49:18  |
| 97:4,4,8,11    | 189:5                 | 19:17 20:8,12         | <b>feel</b> 12:5 32:16   | 49:20 55:9               |
| 101:23 105:25  | <b>farmer</b> 50:10   | 20:13,13 29:4         | 58:25 59:23              | 81:7 82:11,11            |
| 106:12,16      | 52:20 54:6            | 30:23 33:16,21        | 184:23 185:3             | 94:3,12 95:3             |
| 107:17,22,24   | 86:20 131:24          | 35:16 54:12,15        | <b>fees</b> 59:22        | 127:15 147:14            |
| 107:24 108:8   | 132:12,12,21          | 54:18,19 58:20        | <b>feet</b> 11:4,6 63:21 | <b>finalization</b>      |
| 108:25 109:9   | 133:3 143:25          | 61:11 62:1,13         | 64:6,7,8 65:9            | 56:15                    |
| 109:11,25      | 154:8 156:1           | 62:23 63:4,7          | 65:10 67:3,4,8           | <b>finally</b> 96:25     |
| 111:11 113:10  | 169:24 170:1,2        | 63:12 85:21           | 67:9,12,16               | 101:19 204:20            |
| 115:17,19,25   | 208:1                 | 86:1,21,22,23         | 145:3 159:21             | <b>financial</b> 109:20  |
| 116:11,12,14   | <b>farmer's</b> 77:23 | 87:1,10,23            | 173:1,5,6,11             | 116:16 127:3             |
| 117:9,10,22,25 | <b>farmers</b> 11:4   | 88:3,6 89:10          | 195:4,11,11              | 228:2                    |
| 118:5,20 119:1 | 47:21 49:12           | 97:3 106:17           | 196:22                   | <b>financially</b>       |
| 119:6,12,23    | 56:4,19 59:6          | 111:2 112:6           | <b>felt</b> 154:3        | 119:19                   |
| 122:13 123:12  | 73:14,25 74:2         | 118:17 137:8          | <b>Ferguson</b> 106:22   | <b>financing</b>         |
| 123:13 124:4,6 | 96:19 115:10          | 143:22,22             | 113:4 115:22             | 117:20 228:4             |
| 125:13 126:6   | 115:11,13             | 152:11,19             | <b>fertilizers</b> 175:5 | <b>find</b> 24:19 213:3  |
| 128:1,19       | 116:15 118:11         | 155:23 156:19         | <b>field</b> 10:9 34:19  | <b>finding</b> 15:20     |
| 132:11,14      | 118:15 129:11         | 158:1 165:17          | 59:11 158:8              | <b>fine</b> 7:5 37:19    |
| 133:21 135:11  | 129:22 133:13         | 169:20 175:22         | 159:6,8,18,18            | 104:21 145:18            |
| 135:18 136:20  | 133:14 137:20         | 181:8,19,21,23        | 161:14,14                | 235:8                    |
| 136:25 137:10  | 152:25 153:2,3        | 193:15,16             | 163:9,10 169:1           | <b>finish</b> 16:7 27:21 |
| 137:12,17,18   | 153:7,10,12,18        | 195:12 207:6          | 169:1,2 177:18           | 46:11 127:14             |
| 139:14,15,21   | 170:12,17             | 209:24,25             | 177:18 183:1             | 235:6                    |
| 143:14,18      | 183:7 185:14          | 210:24                | 220:24,24                | <b>finishing</b> 138:15  |
| 146:1,7,7,20   | 186:3,9,21            | <b>fashion</b> 34:8   | 234:8                    | <b>firm</b> 232:4        |
| 146:24 147:10  | 199:11 212:23         | <b>faster</b> 20:14   | <b>fields</b> 13:16      | 237:23                   |
| 147:13 152:7   | <b>farming</b> 15:17  | 34:20 167:8           | 58:21 96:20              | <b>first</b> 11:22 13:20 |

|   |   |   |  |  |
|---|---|---|--|--|
| 14:8,13,21<br>15:23 17:16<br>27:4,5 34:5,6<br>42:14 43:13,25<br>48:11 60:18,22<br>60:23 68:6,6<br>69:19,19 76:17<br>80:14 85:3<br>90:20 99:18<br>103:22 105:17<br>106:25 142:24<br>143:15 149:21<br>151:13 170:15<br>174:8 189:23<br>189:25 213:16<br>218:14,17<br>224:17 225:22<br>227:13 228:9<br>229:12 232:15<br>234:4,4<br><b>five</b> 19:1 94:14<br>94:15 148:7<br>166:19 167:5<br>218:2<br><b>five-year</b> 164:6<br><b>fix</b> 8:4 206:7<br><b>fixed</b> 39:13,14<br>39:18<br><b>flesh</b> 74:25<br><b>flood</b> 176:18,19<br>204:25<br><b>Floor</b> 3:7<br><b>flow</b> 163:3 207:7<br>234:11<br><b>flows</b> 229:19<br><b>fluctuate</b> 27:19<br>29:6 39:20<br><b>fluctuates</b> 28:1<br><b>focus</b> 141:23<br><b>focused</b> 73:10<br>124:23<br><b>folks</b> 17:9 98:12<br><b>follow</b> 131:8<br>134:22 144:10<br>161:14 179:25<br><b>following</b> 46:19<br>49:10,13 120:3 | 197:13<br><b>follows</b> 7:18<br>100:24 105:17<br>151:13 225:22<br><b>forage</b> 160:15<br>161:20 178:10<br>178:11,16<br><b>force</b> 82:25<br><b>foregoing</b> 237:6<br><b>forest</b> 113:21<br><b>forklift</b> 189:2<br><b>forklifts</b> 188:25<br><b>form</b> 24:25 35:2<br>74:21 133:1<br>211:7<br><b>formalized</b><br>210:20<br><b>formally</b> 6:2<br><b>format</b> 24:20<br>25:2,12<br><b>formation</b> 67:7<br><b>formed</b> 41:24<br>42:3,9<br><b>former</b> 119:5<br>211:8<br><b>forth</b> 77:25<br>217:14<br><b>Fortunately</b><br>184:4<br><b>forward</b> 97:12<br>108:17 114:14<br>120:18<br><b>forward-looking</b><br>120:12<br><b>found</b> 163:17,21<br>164:6 178:11<br><b>foundation</b> 26:5<br>26:22 77:15<br>105:11 112:18<br>130:22 146:25<br>195:16,25<br><b>founding</b> 42:13<br><b>four</b> 17:25 19:1<br>70:22 86:1<br>109:2 167:6<br>179:8 184:16<br>221:23 | <b>four-year-old</b><br>160:9 204:15<br><b>fourth</b> 32:13<br><b>fourth-genera...</b><br>154:8 156:1<br><b>frame</b> 196:19<br><b>framework</b><br>231:23 234:11<br><b>frankly</b> 92:21<br><b>Franzoy</b> 4:9<br>149:8,9,17,18<br>149:20 151:12<br>151:16 158:16<br>161:6 169:13<br>170:19 171:13<br>174:2 175:7<br>180:4,8 182:5<br>185:7,10<br>187:21 189:4<br>189:18 190:5<br>196:20 199:23<br>218:6 219:18<br>219:24 220:3<br>220:19 222:23<br><b>free</b> 12:5 148:4<br>184:23 185:3<br><b>frequent</b> 194:23<br><b>fresh</b> 206:19<br><b>front</b> 39:16<br>91:25 107:1<br>126:19 157:19<br>231:21<br><b>fruit</b> 168:2,3<br>177:1,1,6<br><b>FSA</b> 159:4<br><b>full</b> 51:7 71:4,7<br>76:9 77:4,9<br>79:1 80:17<br>82:2 91:19,21<br>92:13,15 95:22<br>131:5,6 170:20<br>170:20,22,24<br>194:13 201:2,4<br>201:6<br><b>full-time</b> 187:23<br>188:10,17<br><b>fully</b> 74:19 | <b>functioning</b> 64:5<br>182:15<br><b>funds</b> 117:13<br><b>further</b> 4:4 7:17<br>7:19 44:20<br>60:16 83:4<br>93:5 97:19,21<br>104:16,21<br>121:11 144:7<br>147:22 175:20<br>189:21 219:16<br>220:12 222:12<br>222:15,20<br>237:9<br><b>future</b> 104:3<br>186:16,16<br>233:8<br><b>fuzzy</b> 184:7<br><hr/> <b>G</b> <hr/> <b>G</b> 235:1<br><b>G-A-R-C-I-A</b><br>225:8<br><b>G-R-E-G-O-R...</b><br>100:11<br><b>gage</b> 28:15,17<br><b>gain</b> 53:21 86:10<br><b>gained</b> 230:2<br><b>gallons</b> 67:20<br><b>game</b> 45:19<br><b>Garcia</b> 4:12<br>158:8,14 218:2<br>223:2 224:1,2<br>224:25 225:7<br>225:15,21,25<br><b>Garfield</b> 215:23<br>215:25 216:16<br><b>GARZA</b> 237:3<br>237:19<br><b>gas</b> 227:19 228:2<br><b>gate</b> 166:17<br>169:23<br><b>gates</b> 13:20<br><b>general</b> 2:20 9:9<br>12:11 107:19<br>109:3,18<br>119:16 124:20 | 134:23 135:3<br>135:15 136:10<br>195:4<br><b>generally</b> 115:7<br>164:4 169:6,10<br><b>generate</b> 159:1<br><b>generated</b><br>158:19<br><b>generations</b><br>118:14<br><b>gentleman</b><br>124:13<br><b>geographic</b><br>142:1<br><b>Georgia</b> 11:2<br><b>getting</b> 20:12<br>38:24 54:19<br>60:8 77:4,6<br>127:9 178:13<br>187:1 223:1<br><b>gin</b> 126:2<br><b>give</b> 13:17 14:2<br>27:24 51:19<br>53:17 80:22<br>88:10 96:3<br>99:13,17<br>116:17 125:18<br>125:18 130:24<br>149:12 159:3<br>224:5<br><b>given</b> 23:19 84:1<br>84:3 191:16<br>237:16<br><b>gives</b> 32:4 80:20<br>233:15<br><b>giving</b> 102:7<br>112:16<br><b>go</b> 11:1 12:20<br>15:8 16:22<br>17:13 21:8<br>22:12 27:3,5<br>27:10 30:21<br>32:19,20,25<br>34:22 36:21<br>37:19 49:20<br>51:20 58:9,20<br>59:6 60:18,22 |
|---|---|---|--|--|

|   |   |   |  |  |
|---|---|---|--|--|
| 60:23 64:15,23<br>67:25 70:8,14<br>70:20 72:7,8<br>74:9 75:12<br>77:25 78:12<br>80:2,5,6,14,17<br>81:5,8 83:9<br>84:20 87:7<br>89:20 91:6<br>102:19 105:14<br>107:23 116:22<br>117:5 119:3,8<br>119:24 120:23<br>122:1,18 123:9<br>123:24 128:6<br>129:1 131:2<br>135:13 137:3<br>138:9 141:7,11<br>143:1 148:4<br>158:15 172:8<br>172:10,12<br>185:4,4,21<br>189:23,25<br>192:1 195:19<br>198:15 199:22<br>203:3,17<br>210:23 211:11<br>215:19 218:4<br>219:3 223:6<br>225:9 230:5<br>235:13<br><b>goal</b> 72:2,4,5<br>118:20 119:12<br>119:17<br><b>goals</b> 119:19<br>233:4 234:15<br><b>goes</b> 9:4,19<br>10:12 51:13<br>74:22 75:21<br>84:6 101:8<br>103:3 123:5<br>147:1,5 230:20<br>233:5,10<br><b>going</b> 5:5 6:22<br>8:10 17:15,21<br>20:9 26:9<br>29:14 31:1,4 | 34:10,19 39:14<br>39:15 41:6<br>43:10 44:18,24<br>50:23 51:5,11<br>56:8 57:8,10<br>57:11 58:11,16<br>59:12 60:17,22<br>60:23 79:7<br>93:1,1 97:7,12<br>99:17 106:22<br>110:3,11 117:4<br>118:14 120:1<br>121:12,19,19<br>121:20 126:21<br>129:3 131:22<br>132:23 133:12<br>138:14 141:5<br>154:25 163:4<br>166:2,3,5<br>183:16 185:1<br>186:14,15<br>189:23,24<br>210:24 211:4<br>223:4 229:12<br><b>good</b> 5:9,12,15<br>5:18 7:21<br>28:21 61:3,4<br>83:3,12,14<br>98:13,17,24<br>99:7,8 105:20<br>105:22 115:5<br>126:21 130:14<br>144:13 151:16<br>176:6 184:1<br>204:21 223:16<br>223:17 225:25<br>226:1 235:6,8<br>235:23<br><b>gotten</b> 44:6<br>211:19<br><b>governor</b> 47:1,2<br>78:20,23,24<br>79:2,3,6,11,12<br>114:7,12<br>141:19<br><b>governor's</b><br>78:22 80:19 | <b>grade</b> 177:12<br><b>graduated</b><br>107:11<br><b>graduation</b><br>108:21<br><b>Grande</b> 9:25<br>43:11 46:21<br>47:7,13 55:14<br>56:1,3 68:11<br>68:23,24 70:3<br>72:22 73:4<br>74:14,18,24<br>75:23 76:2,3<br>81:8 82:17,20<br>83:19 94:5,17<br>102:24 106:15<br>109:17 110:25<br>112:1,5 115:2<br>118:10,18<br>120:6 123:1<br>125:11 126:16<br>128:2 131:25<br>133:22,23<br>140:25 141:2,9<br>141:24 142:6<br>142:15,20<br>145:5 152:25<br>153:1 157:17<br>202:8,22<br>230:12,13<br><b>grandfather</b><br>64:2 156:1,9<br>156:13<br><b>graph</b> 61:7<br><b>gray</b> 230:17<br><b>great</b> 68:16<br>128:24 184:13<br><b>greater</b> 8:23<br><b>greatly</b> 137:5<br><b>Greek</b> 228:7<br><b>green</b> 125:23<br>159:20 161:15<br>164:2 168:8,12<br>206:11,12<br><b>Greg</b> 106:9<br><b>Gregg</b> 99:6<br><b>Gregory</b> 4:6 | 100:10 105:16<br><b>grew</b> 42:4 97:10<br>97:13 106:14<br>154:8,11 155:3<br>156:10 157:7<br><b>grid</b> 37:4,7<br><b>gross</b> 208:11<br><b>ground</b> 28:5,12<br>28:15,18,19<br>89:8 155:5<br>184:16 195:1<br>196:10 197:9<br>199:5 205:19<br>208:4<br><b>groundbreaking</b><br>74:12<br><b>grounds</b> 162:23<br><b>groundwater</b><br>11:12 15:12,13<br>17:4 18:8<br>22:22 34:4,13<br>34:24 50:22<br>53:12,14 54:18<br>58:19 60:11<br>62:21 69:23<br>75:15 102:25<br>111:5,7,12<br>112:6 125:8<br>128:15 136:10<br>136:19 137:7<br>144:24 145:2<br>146:12,19<br>147:12 153:23<br>155:8,11<br>156:14 157:22<br>163:21 166:14<br>166:15 167:9<br>171:11,16,20<br>172:8,11,13<br>174:23 175:11<br>175:18,24<br>177:25 178:19<br>178:22 179:19<br>186:20 187:2,4<br>187:7,16 192:7<br>196:1 198:9,21<br>201:14,17,20 | 202:15,19<br>203:5 208:8,25<br>209:6 213:9<br>218:12,21<br>219:13 220:5,7<br>220:10<br><b>group</b> 41:22<br>55:25 153:11<br>153:15<br><b>grouped</b> 234:23<br><b>groups</b> 52:20<br>114:17 218:10<br>218:19<br><b>grow</b> 9:7,10 44:8<br>51:12 52:7<br>72:21 106:13<br>112:9 124:24<br>143:12 153:12<br>156:9,10 159:4<br>160:14,14<br>163:19,23,25<br>164:2,3,20<br>171:7 178:7<br>206:18<br><b>grower</b> 60:10<br>68:4,9 71:22<br>218:19<br><b>growers</b> 41:20<br>41:21,23 42:1<br>42:7,12,18<br>44:5 45:2<br>48:24 49:12<br>51:21 52:1,18<br>55:12 58:2,6<br>69:11 75:2<br>80:8,20 95:6<br>112:20,21,23<br>112:24 218:10<br><b>Growers'</b> 58:23<br><b>growing</b> 9:22<br>47:13 138:13<br>154:25 155:1<br>157:9 159:12<br>159:25 160:12<br>160:23 231:15<br><b>grown</b> 159:6<br>163:19 |
|---|---|---|--|--|

|                         |                         |                         |                          |                         |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------|
| <b>growth</b> 233:3,14  | 164:11,12,14            | <b>hearing</b> 1:11     | <b>high-water-use</b>    | <b>history</b> 107:4    |
| <b>guarantee</b> 13:4   | 187:24 188:22           | 237:8,11                | 97:15                    | 115:18                  |
| 170:6                   | 188:23 206:6            | <b>hearsay</b> 124:17   | <b>higher</b> 10:6       | <b>hit</b> 134:7 137:21 |
| <b>guaranteeing</b>     | <b>harvested</b> 160:3  | 129:16                  | 28:17,17 34:23           | <b>hold</b> 56:16,23    |
| 59:4                    | 160:4 161:4             | <b>heart</b> 103:4      | 39:1,2,4 92:13           | 121:25 169:2            |
| <b>guess</b> 45:17,20   | 174:9 206:18            | <b>heat</b> 204:9       | 92:25 162:25             | 185:14 186:2,8          |
| 86:4 179:18             | 206:23                  | <b>HEATHER</b>          | 167:4 174:20             | 226:17                  |
| 201:24 205:4            | <b>harvesting</b>       | 237:3,19                | 175:21                   | <b>holding</b> 110:22   |
| 208:8 209:23            | 160:7                   | <b>heavily</b> 47:8     | <b>higher-quality</b>    | <b>honestly</b> 66:10   |
| 211:13                  | <b>hatch</b> 62:1,11,23 | 165:12                  | 174:16                   | <b>Honor</b> 5:9,12,15  |
| <b>guest</b> 188:13     | 63:4,11 86:21           | <b>heavy</b> 8:15       | <b>higher-value</b>      | 5:19 6:19 7:23          |
| 206:4,5,8               | 86:22 87:10,23          | 165:6                   | 174:17                   | 24:9,12 25:8            |
| <b>guide</b> 39:12      | 88:15 89:7              | <b>held</b> 1:12 110:16 | <b>higher-yielding</b>   | 25:21,22 26:1           |
| 226:13 232:24           | 151:22 152:2            | <b>help</b> 17:15 21:23 | 174:20                   | 30:13 36:11,14          |
| <b>gypsum</b> 172:4     | 152:12,20               | 39:19 55:22             | <b>highest</b> 60:3      | 37:11,21 42:25          |
|                         | 156:5 157:24            | 103:13 171:25           | <b>highlight</b> 19:12   | 45:16,21 60:16          |
|                         | 158:2,6,13              | 172:5,7 180:24          | 75:17                    | 60:20,24 70:21          |
| <b>H</b>                | 159:14 161:15           | 187:13,24               | <b>highlighted</b>       | 72:10 79:18,23          |
| <b>H</b> 3:1 51:18      | 164:1 172:14            | 188:1,21                | 75:24 76:17              | 83:8 93:9               |
| 234:10 235:2            | 172:17 173:4            | 196:18 209:9            | <b>highlighting</b>      | 97:20,23 98:1           |
| <b>H2A</b> 206:4        | 173:16 183:8            | 212:14,23               | 89:18,19                 | 98:14,18,21,24          |
| <b>hair</b> 10:6 14:4   | 187:20 190:9            | 230:8                   | <b>highly</b> 40:17      | 99:4 100:6,14           |
| <b>half</b> 21:14 65:18 | 190:17 191:9            | <b>helped</b> 15:17     | 127:5                    | 100:19 102:2            |
| 232:9                   | 192:19 193:1,4          | 176:1 212:9             | <b>highs</b> 45:11       | 102:11,12               |
| <b>hand</b> 99:12       | 193:6,10,23             | 218:23 219:7            | <b>Highway</b> 216:2     | 103:19 104:5            |
| 149:11 188:23           | 195:2 201:1             | <b>helpful</b> 12:6     | 216:13                   | 105:3,7 116:2           |
| 206:10,16               | 204:6,23 209:2          | 54:6,7 105:6            | <b>hire</b> 175:12       | 116:5,10,19,20          |
| 224:3 237:16            | 209:14,21,23            | 118:24 119:18           | 187:23,25                | 116:25 118:23           |
| <b>handheld</b> 28:18   | 213:8,17 215:3          | 212:21                  | 188:11,12                | 120:4,21,24             |
| <b>hang</b> 70:13       | 215:8,16                | <b>helping</b> 154:10   | 189:16                   | 121:12,16               |
| <b>happen</b> 11:3      | 216:12 222:5,6          | 154:12,17               | <b>hired</b> 47:10       | 122:4,23                |
| 21:15 221:13            | <b>he'll</b> 6:11 101:9 | <b>helps</b> 156:18     | 124:14                   | 123:10,17,22            |
| <b>happened</b> 48:2    | 116:17                  | 161:22 175:2            | <b>hiring</b> 124:9      | 127:8 129:2,15          |
| 49:5 133:17             | <b>head</b> 13:19       | 176:2,9                 | <b>historian</b> 121:14  | 135:6 141:5             |
| <b>happening</b>        | 21:21 34:15,18          | <b>Henderson</b>        | 121:15,15                | 142:24 144:6            |
| 28:21 59:25             | 169:23 227:17           | 124:14                  | <b>historic</b> 20:23    | 144:10 147:22           |
| <b>happens</b> 23:7     | <b>heading</b> 11:21    | <b>herbicide</b>        | 44:9 47:12               | 147:25 148:11           |
| 131:5 167:24            | <b>hear</b> 7:22 8:2    | 162:16                  | 52:6,9,10,25             | 149:7 150:21            |
| <b>happy</b> 7:3 94:8   | 54:24 142:23            | <b>herbicides</b>       | 120:7,7,12,18            | 151:1,11 185:6          |
| <b>hard</b> 54:19       | 142:24 185:7            | 162:18                  | 121:12                   | 185:21 189:21           |
| <b>harmed</b> 58:25     | <b>heard</b> 43:11      | <b>hereto</b> 237:6     | <b>historical</b> 15:20  | 190:2 196:19            |
| <b>harms</b> 102:19     | 55:2 94:2               | <b>high</b> 38:10       | 20:5,22 83:23            | 199:16,18               |
| <b>Hartman</b> 3:6      | 120:13 129:21           | 156:20 164:1            | 122:10 127:4             | 202:25 203:15           |
| 149:3,3 184:20          | 139:3 164:24            | 164:23 174:18           | 146:19                   | 219:16,20               |
| 223:20                  | 173:6 183:2             | 176:7 177:4,8           | <b>historically</b> 96:5 | 220:13,15               |
| <b>harvest</b> 154:13   | 185:17,22               | <b>high-impact</b>      | 97:7 123:13              | 222:13,16               |
| 156:22 160:6,8          | 224:12                  | 75:16                   | 124:6 138:18             | 223:16 224:1,8          |
| 160:24 161:2            |                         |                         |                          |                         |

|  |  |   |  |   |
|--|--|---|--|---|
| 224:11,14<br>225:20 235:11<br>235:22 236:4<br><b>HONORABLE</b><br>1:11<br><b>hopefully</b> 209:8<br><b>horse</b> 123:2<br>145:20<br><b>hot</b> 40:9,10<br><b>hotter</b> 167:21<br><b>hour</b> 35:25<br>37:15<br><b>hourly</b> 6:7<br><b>hours</b> 15:4 36:18<br>37:5,22 38:16<br>90:17,20 91:15<br>91:17 92:3,9<br>92:12 168:8,9<br><b>Houston</b> 237:24<br><b>Hueco</b> 230:20<br>231:1<br><b>huge</b> 59:10<br><b>human</b> 109:19<br><b>Hume</b> 78:20,21<br>79:13<br><b>hundred</b> 88:12<br>88:14 198:23<br>209:10<br><b>hurts</b> 176:25<br><b>hydrogeology</b><br>234:9<br><b>hydrologist</b><br>47:10 130:13<br>130:23<br><b>hypothetical</b><br>130:15 131:5,9 | <b>image</b> 158:9,12<br><b>immature</b><br>159:23<br><b>immediate</b><br>104:9,12 124:9<br><b>impact</b> 40:2,7,15<br>41:3 60:2,11<br>134:15 135:5<br>135:14,20<br>136:20,25<br>137:7,10,12,16<br>137:17,18,18<br>137:25 138:1,2<br>138:14,20<br>146:20 147:13<br>168:10,22<br>176:23 177:13<br>187:17 189:6,7<br><b>impacted</b> 115:14<br><b>impacts</b> 56:11<br>101:1,10,21<br>138:13 176:25<br><b>impediment</b><br>57:9<br><b>implementation</b><br>218:19 227:13<br>233:9<br><b>implemented</b><br>74:20 75:21<br>76:19 215:16<br><b>implementing</b><br>55:24 214:19<br>218:11<br><b>importance</b><br>69:21 102:21<br><b>important</b> 10:3<br>15:18 39:23,25<br>87:15 102:20<br>112:16 232:17<br>232:19 234:2<br><b>importation</b><br>233:7<br><b>impose</b> 43:10<br><b>improper</b><br>100:23<br><b>improve</b> 171:14<br><b>Improvement</b> | 133:23<br><b>inability</b> 125:9<br><b>inches</b> 9:16,23<br>10:6,12 13:9<br>13:15,15,17<br>14:2 28:13,13<br>38:14 39:8<br>59:18 96:22,23<br>125:2 132:4<br>144:25 170:25<br>171:6,7,8<br><b>include</b> 118:11<br>118:15 127:17<br>127:17 144:24<br>163:1 181:2<br>209:24<br><b>included</b> 88:4<br>210:12 211:18<br><b>includes</b> 126:24<br>126:25 229:16<br><b>including</b> 11:18<br>52:20 69:17<br>127:4 211:1<br>214:20<br><b>incorrect</b> 149:4<br><b>increase</b> 22:1<br>54:2 88:20<br>119:15<br><b>increased</b> 54:3<br>177:24 184:11<br>203:8 222:9<br><b>increases</b> 187:3<br><b>increasing</b> 86:3<br>86:16<br><b>incredibly</b> 39:25<br><b>independent</b><br>106:1,4 139:13<br><b>INDEX</b> 4:1<br><b>indicate</b> 18:22<br><b>indicated</b> 5:24<br>6:6 13:14 39:2<br>95:15 104:17<br>150:17 184:16<br><b>indicates</b> 28:2<br>51:6<br><b>indicating</b> 44:1<br>230:14 | <b>individual</b> 30:22<br>47:21 105:9<br>195:15,22<br>199:11<br><b>individuals</b> 18:4<br>212:24<br><b>industries</b> 79:8<br>138:3<br><b>industry</b> 42:4<br>58:11 79:7<br>102:22 105:8<br>125:20 126:3<br><b>inequity</b> 59:14<br>132:16<br><b>infer</b> 91:13<br><b>influence</b> 165:15<br><b>influenced</b><br>165:11<br><b>information</b><br>11:19 24:25<br>25:12,20 36:23<br>47:9 113:16,17<br>114:25 115:6<br>115:10,13<br>134:9 135:4<br>140:1 194:1<br>200:21 226:2<br>229:18<br><b>informational</b><br>115:7<br><b>informed</b> 70:12<br><b>informing</b> 69:10<br><b>infrastructure</b><br>12:9 58:17<br>127:22 228:12<br><b>initial</b> 95:11,11<br><b>initially</b> 81:20<br>95:7<br><b>initiative</b> 74:23<br><b>injunction</b> 104:9<br><b>injunctive</b><br>102:15,15,16<br>102:18 103:4<br>104:1,12<br>121:22,23<br>122:2<br><b>injury</b> 102:20 | <b>input</b> 138:14<br><b>inputs</b> 203:19<br><b>inside</b> 11:5<br><b>insight</b> 114:13<br><b>installed</b> 166:8<br>171:25 221:19<br><b>installing</b> 175:25<br>221:22<br><b>instance</b> 161:13<br>174:7<br><b>instances</b> 118:14<br><b>instructed</b> 74:23<br><b>instrument</b><br>28:11<br><b>insurance</b><br>117:16<br><b>integration</b><br>125:22 127:1<br>138:11<br><b>interchangeably</b><br>193:2<br><b>interest</b> 102:20<br>122:12<br><b>interested</b><br>237:13<br><b>interesting</b><br>35:24<br><b>interfering</b><br>136:11<br><b>intermediate</b><br>65:5<br><b>intern</b> 25:6<br>27:23 36:21,23<br><b>interpretation</b><br>69:1,5 78:8<br><b>interrupt</b> 16:21<br>64:25 100:15<br><b>interrupting</b><br>87:19<br><b>interstate</b> 57:11<br>114:3 140:10<br><b>intervenor</b> 5:4<br><b>introduce</b> 139:4<br><b>introduced</b><br>69:20<br><b>introduction</b><br>101:13 |
|--|--|---|--|---|

|                        |                          |                         |                        |                         |
|------------------------|--------------------------|-------------------------|------------------------|-------------------------|
| <b>inventory</b> 189:1 | 72:24 106:17             | 81:12 94:2,11           | <b>judge</b> 5:1,11,14 | 196:7 197:13            |
| <b>invested</b> 108:14 | 110:18 128:8             | 94:21 102:10            | 5:17,20,22 6:5         | 199:22 203:3            |
| 178:2                  | 176:18 190:21            | 102:17 104:15           | 6:6,9,12,14,15         | 203:16 219:2            |
| <b>investigated</b>    | 191:17 192:25            | 177:7 206:7             | 6:21 7:7,10            | 219:19 220:14           |
| 15:13                  | 193:10 199:4             | <b>issued</b> 18:2      | 24:11,14 26:3          | 222:14,18,22            |
| <b>investment</b>      | 215:24                   | <b>issues</b> 18:1 42:9 | 26:13,18,21            | 222:25 223:1,6          |
| 120:14 163:5           | <b>irrigating</b> 31:17  | 55:13,16                | 30:15,17 36:13         | 223:14,17               |
| <b>investments</b>     | 86:17 194:4              | 102:22 103:14           | 36:16 38:4             | 224:2,12,15,20          |
| 110:13 116:16          | <b>irrigation</b> 8:6    | 133:10 135:19           | 46:3,9 48:5            | 224:24 225:4,9          |
| 127:23                 | 9:16 10:5                | 141:7                   | 49:8 54:23,24          | 235:5,13,24             |
| <b>involve</b> 90:6    | 11:19 27:4,6             | <b>it'd</b> 67:24 208:9 | 60:17,21,25            | 236:5                   |
| <b>involved</b> 55:13  | 27:10,11,19              | <b>it'll</b> 6:4 17:23  | 64:25 65:13            | <b>judgment</b> 48:8    |
| 55:17 62:9,23          | 28:1,4,7,8,23            | 21:24 223:10            | 77:18,21 79:21         | 55:9 61:22,23           |
| 102:18 112:15          | 38:19,21 39:24           | <b>italics</b> 72:13    | 79:24 80:1             | 81:7 82:12              |
| 112:17 113:6           | 40:2,8,16,22             |                         | 83:5,9 87:13           | 94:12 95:3              |
| 114:19 119:22          | 41:4,5,15                | <hr/> <b>J</b> <hr/>    | 87:18 93:6,10          | 104:10                  |
| 126:15 139:21          | 54:25 60:1               | <b>J</b> 3:12           | 95:2 97:21,25          | <b>July</b> 14:9 140:20 |
| 227:10,12,15           | 72:18 79:5               | <b>J-O-R-G-E</b>        | 98:2,8,15,19           | 140:22 167:17           |
| 228:3,5,9,16           | 85:7,14,22               | 225:8                   | 98:22 99:1,9           | 180:13                  |
| 228:20 229:15          | 87:22 111:4,24           | <b>James</b> 3:12       | 99:16,21 100:1         | <b>June</b> 13:20       |
| 232:5                  | 112:3 124:25             | 98:25 102:2             | 100:7,12,18            | 160:5 167:17            |
| <b>involvement</b>     | 125:1 128:11             | 143:22 144:14           | 102:9 103:18           | 170:15,18,18            |
| 112:12,15              | 128:12 143:7             | 190:5                   | 103:21 104:4,7         | 174:8                   |
| 114:21                 | 166:9,12,20              | <b>james.dubois...</b>  | 105:14 106:6           | <b>Justice</b> 3:13     |
| <b>iPads</b> 100:3     | 171:25 172:3             | 3:15                    | 110:5,9 116:22         | 61:6 144:15             |
| 150:4 225:2            | 176:1,9,23               | <b>January</b> 47:9     | 117:1 119:3,8          | 190:6                   |
| <b>iPhones</b> 100:3   | 178:3 188:18             | 78:17,19                | 120:1,23               | <b>Justin</b> 91:11     |
| 150:4 225:1            | 191:17 192:8             | <b>Jeff</b> 5:13 80:4   | 121:25 122:7           | 140:5                   |
| <b>iron</b> 217:7      | 194:7 201:14             | 114:18                  | 123:4,9,23             | <b>jwechsler@m...</b>   |
| <b>irrigate</b> 8:11   | 201:17 204:23            | <b>Jeffrey</b> 2:14     | 126:13 127:12          | 2:17                    |
| 11:10 13:22            | 204:25 205:2             | <b>job</b> 109:20       | 128:6,21               |                         |
| 19:23 20:11,14         | 205:10,11,14             | 116:14                  | 129:18 131:1           | <hr/> <b>K</b> <hr/>    |
| 23:18 28:9             | 205:15,16                | <b>John</b> 3:1 46:15   | 131:22 133:6           | <b>keep</b> 22:21       |
| 34:16 39:21            | 218:18 221:20            | 50:7 70:17              | 135:10 136:3           | 23:17,24 30:6           |
| 86:13,14               | 222:1,3,7,9              | <b>john.draper@...</b>  | 137:3 138:9,23         | 36:8 132:1,5            |
| 144:17,23              | 226:19                   | 3:3                     | 141:10 142:10          | <b>keeping</b> 15:1,21  |
| 155:6 156:14           | <b>irrigations</b> 13:24 | <b>join</b> 124:18      | 143:1 144:8            | 30:1                    |
| 165:22 166:11          | 14:2 188:18              | 127:11 129:17           | 145:8 147:4,23         | <b>keeps</b> 159:5      |
| 166:13,21,22           | <b>irrigator</b> 154:12  | 152:8                   | 148:2,7,12,14          | 213:6                   |
| 166:25 167:1,3         | <b>ISC</b> 114:9         | <b>joins</b> 25:23      | 148:20,23              | <b>kept</b> 24:18 28:25 |
| 167:5,8,9,11           | 140:20,23,24             | 102:3 123:20            | 149:1,5,9,15           | <b>kill</b> 162:9,10    |
| 167:19 168:4           | 141:7,16,23              | <b>Joint</b> 11:14 48:7 | 149:20,24              | 221:17                  |
| 168:22 181:23          | 142:6,7,14,16            | 81:6                    | 150:2,9,22             | <b>killed</b> 41:7      |
| 217:16                 | 142:20 143:3             | <b>Jorge</b> 4:12 224:1 | 151:4,7,9              | <b>killer</b> 44:23     |
| <b>irrigated</b> 20:18 | <b>issue</b> 5:22 6:20   | 225:7,21                | 183:16,23              | <b>kilowatt</b> 35:11   |
| 20:20 23:19            | 48:9 49:16               | <b>Jornada</b> 230:19   | 185:22 189:22          | 35:24 36:18             |
| 27:8 70:3              | 54:23 55:11,18           | 230:23 234:6            | 190:1 195:18           | 37:5,15,22              |

|                        |                |                       |                         |                         |
|------------------------|----------------|-----------------------|-------------------------|-------------------------|
| 38:11,16,22            | 84:9,10 85:24  | 186:15,19             | 206:7                   | 108:3,23                |
| 90:17,20 91:15         | 85:24 86:1,19  | 188:19,20,23          | <b>laboratory</b>       | 109:23 110:19           |
| 91:17 92:2,9           | 91:21,22 92:21 | 188:24,25             | 175:13 228:6            | 110:20 112:17           |
| 92:12                  | 93:18 94:20    | 189:1,2,8,8,9,9       | <b>lack</b> 40:2,8,16   | 151:18,23               |
| <b>kin</b> 237:13      | 95:8,10 109:3  | 189:10,11,13          | 59:7 125:9              | 152:12,20               |
| <b>kind</b> 26:12      | 112:14,15      | 189:19 191:20         | 168:10                  | 158:4 173:7,10          |
| 38:12 40:5             | 114:12,16      | 192:2 193:5,20        | <b>laid</b> 26:4,22     | 190:12 226:3            |
| 41:20 118:16           | 115:8,9 122:11 | 193:23 194:12         | <b>land</b> 19:23 50:14 | 226:25 227:3            |
| 143:12,23              | 129:5 131:10   | 194:13,15,16          | 88:20 100:25            | 229:2 230:8,14          |
| 161:19 178:14          | 131:16 132:3   | 194:19 195:3          | 106:21 108:22           | 231:10,20               |
| 178:21 194:15          | 132:23 133:16  | 195:12,25,25          | 114:22 122:16           | 235:16                  |
| 195:12 196:1           | 133:19,20      | 196:1,5,16            | 122:25 124:11           | <b>late</b> 40:20 91:19 |
| 216:15 217:4           | 134:23 136:8   | 198:4 200:16          | 127:20,22               | 154:20 160:5            |
| <b>kinds</b> 153:10    | 136:14 138:11  | 200:23 201:5,9        | 128:14 143:7            | 161:4                   |
| 175:17                 | 139:24 140:14  | 201:12 202:2,3        | 143:10,13               | <b>lateral</b> 215:23   |
| <b>King</b> 55:8 94:23 | 141:1,18,18    | 202:4,5 203:18        | 144:3,16,23             | 215:25 216:16           |
| <b>Klahn</b> 2:4 4:5   | 151:2 153:23   | 203:19,19             | 156:6 157:15            | <b>latest</b> 6:4       |
| 5:8,9,10 6:19          | 153:24,24      | 204:4,11,12,21        | 163:12,18               | <b>law</b> 3:7 71:15,16 |
| 6:22 7:9 24:12         | 154:2 155:8,10 | 206:7 207:18          | 191:1 192:8,11          | 71:17,20 72:6           |
| 24:15,16 25:1          | 155:12,15      | 208:18,18             | 192:18,20,25            | 107:20                  |
| 25:4,8 28:25           | 157:16 159:7   | 209:7,7,22,22         | 193:10 195:6            | <b>lawful</b> 70:7      |
| 30:16 36:14,17         | 159:19 160:18  | 211:1,10,11,14        | 196:23 203:23           | <b>Lawrence</b> 2:5     |
| 36:22,25 37:3          | 162:4,14,17,21 | 212:1,18 213:2        | 204:5 208:1,17          | <b>lawsuit</b> 58:8     |
| 37:8,11,22             | 163:16 164:12  | 213:5,8,19            | 208:19,20,24            | 134:19 153:22           |
| 45:16 46:1,5           | 164:12,17,17   | 214:23 215:10         | 209:2                   | 186:14,18               |
| 46:10 60:18            | 164:21,22,23   | 215:10,11,12          | <b>landlord</b> 157:16  | <b>lawsuits</b> 186:16  |
| 83:5,7,11,12           | 165:4,5,6,7,16 | 215:13,14,17          | 157:17,19               | <b>lay</b> 105:11       |
| 87:15 89:15,17         | 165:17,18,19   | 216:22 217:6          | 217:9                   | <b>layer</b> 197:1,5    |
| 90:14,19 91:10         | 165:24 166:1,2 | 217:15,15             | <b>landlords</b> 211:5  | <b>layout</b> 178:5     |
| 91:12 93:4             | 166:4,6 167:2  | 223:21                | <b>lands</b> 73:16 74:7 | <b>leach</b> 162:23     |
| 97:1,22,25             | 167:6 168:6,11 | <b>knowledge</b> 15:4 | 175:23                  | 163:14,22               |
| 98:1                   | 168:14,18      | 118:5 147:1           | <b>laptops</b> 100:3    | 172:5 174:12            |
| <b>Klahn's</b> 26:7    | 169:3,9,10     | 230:2                 | 150:4 225:2             | 176:22 187:14           |
| 30:3 45:25             | 171:21 174:15  | <b>known</b> 47:17    | <b>large</b> 10:2 38:15 | <b>leaching</b> 176:4   |
| <b>know</b> 6:12 7:4   | 174:18,19,19   | 48:8 50:1             | 55:25 97:16             | 176:15,16,17            |
| 14:5,10,12,21          | 175:3,19,20,21 | 134:8,21              | 110:20 118:11           | <b>leading</b> 137:15   |
| 16:4 17:25             | 175:25 176:1,2 | <b>knows</b> 147:5    | 125:25 126:2            | 138:6                   |
| 21:10 23:16            | 176:4,5,8      | 210:21                | 176:18 228:5            | <b>leaning</b> 178:14   |
| 34:17 37:12            | 177:1,3,4,19   |                       | 228:21 233:18           | <b>lease</b> 73:22      |
| 40:6 42:20             | 177:23,24,24   | <b>L</b>              | <b>largely</b> 74:22    | 143:18 144:2            |
| 45:18 47:23,25         | 178:4,9,9,9,11 | <b>L</b> 2:15 235:2   | 113:9                   | 192:11,13               |
| 54:15 55:7             | 178:12,15      | 237:3,19              | <b>larger</b> 20:6 96:5 | 208:24,24               |
| 59:8 65:1 66:3         | 179:3,3,5,17   | <b>lab</b> 215:22     | 181:18 217:16           | 212:25                  |
| 66:6 67:13             | 181:7,15,20,22 | <b>labeled</b> 75:13  | <b>larger-crop</b> 8:19 | <b>leased</b> 74:7      |
| 68:15,16 78:15         | 182:19,25      | 79:19 230:18          | <b>largest</b> 79:8     | 86:25 143:24            |
| 79:1 81:17,24          | 183:2,7 184:3  | <b>labor</b> 34:17    | 118:6,8                 | <b>leasing</b> 73:15    |
| 82:21,22,24,25         | 184:15,20,20   | 205:18,22,25          | <b>Las</b> 56:3 106:14  | 74:3                    |



|   |  |  |  |   |
|---|--|--|--|---|
| <b>leave</b> 18:20<br>105:2 128:21<br>162:22 163:18 | 39:22 42:22<br>43:24 45:13<br>48:6,16 49:18<br>50:11 51:17,25<br>52:14 56:11<br>61:6 64:23,23<br>67:25 68:5<br>69:17 70:8,20<br>71:2,3 72:7<br>73:11 74:9<br>75:12,13,17<br>78:12,16 80:5<br>81:5 85:3<br>87:19,19 88:11<br>89:14 105:20<br>107:7,23<br>115:16 123:4,9<br>140:4 158:5,15<br>180:7 183:19<br>203:14 209:9<br>213:12 218:4<br>223:2,2,2,8<br>226:6 229:7<br>230:5,6,6<br>231:18 232:22<br>233:24 | <b>licensing</b> 107:20<br><b>limine</b> 101:12<br><b>limit</b> 22:4 53:4<br>69:22 70:2<br>72:17 79:5<br>82:12 95:6<br>97:4 138:17<br>179:12,15<br>198:21 199:3<br><b>limitation</b> 44:2<br>136:18 191:14<br>199:2<br><b>limited</b> 52:2<br>85:19 101:24<br>122:24 200:3<br>214:9<br><b>limiting</b> 44:20<br><b>limits</b> 50:13<br>72:18,23 73:1<br>85:25 86:1<br>211:23 212:3<br>231:11<br><b>line</b> 68:20<br>218:17<br><b>lined</b> 98:5<br><b>list</b> 6:13,14<br>139:19,22,23<br>139:25 140:12<br>233:19,24<br>234:1,9<br><b>listed</b> 66:4<br>100:24 116:6<br>117:2 139:20<br><b>listen</b> 184:21<br><b>listing</b> 139:22<br><b>literally</b> 36:25<br><b>litigation</b> 26:7<br>30:4 36:3<br>48:25 49:15,23<br>57:10,11 95:11<br>134:22 135:24<br>136:9,15,18<br>139:9,19<br><b>little</b> 8:20 16:6<br>22:14 27:11,19<br>27:24 28:6<br>29:6 34:15,16 | 38:16 40:1,22<br>51:18 53:17<br>68:7 69:21<br>80:18 81:9<br>92:24 106:7,8<br>106:8,13 107:7<br>107:8,14<br>112:12 113:2<br>115:6 116:17<br>122:18 126:17<br>152:13 159:22<br>163:17 171:3<br>178:15 184:25<br>196:19 207:22<br>216:9,23<br>222:17<br><b>live</b> 90:13<br>109:23 144:1<br>151:17,18<br><b>lived</b> 59:1<br>151:19<br><b>living</b> 151:25<br><b>LLC</b> 3:1 110:16<br><b>load</b> 8:17 78:14<br><b>loading</b> 70:13<br><b>loads</b> 47:9 187:4<br>187:6<br><b>loam</b> 169:4<br><b>loan</b> 118:21<br>119:13,24<br>123:7,15 124:7<br>125:7 126:19<br>126:21 127:18<br>130:8,11<br>134:15 135:20<br><b>loaner</b> 127:16<br><b>loaning</b> 126:17<br><b>loans</b> 16:11,16<br>109:7,15,15,21<br>117:14,14,15<br>117:21,24,24<br>118:1,2,3,3<br>125:14 126:1,6<br>129:22 133:22<br>133:24 137:12<br>147:6<br><b>local</b> 141:24 | 152:22 179:6<br><b>locals</b> 188:12<br><b>located</b> 63:17<br>110:20 152:19<br>157:24 158:1<br>191:9 192:8,25<br>193:10,22<br>216:2 230:25<br><b>location</b> 230:7<br>230:14<br><b>locations</b> 184:2<br><b>long</b> 73:14 74:2<br>74:4 89:7<br>104:1 151:19<br>153:6 181:8<br>192:1 198:15<br>202:5 206:21<br>208:10,15<br>232:7<br><b>longer</b> 6:11<br>44:18 60:11<br>118:1 167:22<br><b>longer-term</b><br>117:25<br><b>Longworth</b> 50:7<br><b>look</b> 8:10 19:3<br>19:18,20 23:8<br>27:15 31:2,9<br>31:21,24 32:24<br>33:15,23 35:3<br>35:4,4 38:9,11<br>38:21,25 40:25<br>42:22 43:24<br>45:13 48:6<br>51:25 53:9<br>61:16,25 62:3<br>64:15 68:20<br>69:17 71:2<br>72:13 73:11<br>74:10 75:13<br>84:21 95:23<br>106:24 110:13<br>119:9 120:11<br>122:1 124:11<br>130:15 140:4<br>184:3,6 229:7<br>232:22 233:24 |
|---|--|--|--|---|

|   |  |  |  |  |
|---|--|--|--|--|
| <b>looked</b> 67:2<br>71:12,18 91:4<br>124:7 130:2<br>216:4   | 73:8 74:14,24<br>81:7 82:16,19<br>83:19 94:5,17<br>96:9 102:24<br>109:16 110:25<br>115:1 118:10<br>118:18 120:6<br>123:1 125:10<br>126:15 133:22<br>133:23 140:25<br>141:1,9,24<br>142:6,15,20<br>157:17 202:8<br>202:22 | 172:11 194:3,6<br>194:11,21,25<br><b>major</b> 107:11<br>117:19 130:7<br>137:10,11   | <b>March</b> 27:6<br>160:3<br><b>marked</b> 180:8<br><b>market</b> 118:16<br>152:17 164:15<br>164:21 165:12<br>177:11  | 217:1 219:4<br><b>meaningful</b><br>37:13<br><b>means</b> 66:10<br>163:8 174:6<br>198:8  |
| <b>looking</b> 11:8<br>20:25 23:10<br>28:11 29:17<br>30:19 33:6<br>35:13 38:7<br>51:5 53:13<br>54:22 70:11<br>90:16,25 91:13<br>91:14 94:9<br>107:13 112:10<br>113:25 123:15<br>210:3                 | <b>lows</b> 45:11<br><b>LRG</b> 9:10 19:19<br>19:20 41:12<br>48:21 119:23<br>183:10 190:13<br>190:14,16<br>210:25  | <b>Mall</b> 2:10<br><b>man</b> 205:8<br><b>manage</b> 152:1<br>156:18 172:1<br>176:2,9 181:19<br>181:19 189:1<br>222:10  | <b>marketable</b><br>162:8<br><b>marketing</b> 42:5<br>125:22 138:12<br>138:16<br><b>marshal</b> 208:2<br><b>Master</b> 1:11<br>207:23 229:10  | <b>measure</b> 9:22<br>175:7,10<br><b>measured</b> 32:15<br><b>measurement</b><br>217:19,21<br><b>measurements</b><br>175:17   |
| <b>looks</b> 88:8 106:9<br>110:13 115:18<br>224:7 233:6   | <b>LRG-430</b> 234:5<br><b>Lunas</b> 106:14  | <b>managed</b> 109:1<br>109:13<br><b>management</b><br>8:6 19:25 43:7<br>43:16 75:5,19<br>82:16 83:18<br>84:12,14,19<br>106:2 109:4,18<br>109:19,20<br>113:11 126:25<br>162:21 181:5<br>189:2 214:18<br>228:2  | <b>Master</b> 1:11<br>207:23 229:10<br><b>master's</b> 226:17<br><b>masters</b> 22:24<br><b>materials</b> 58:3<br><b>math</b> 88:12<br>131:9<br><b>matter</b> 1:11<br>25:18 29:15<br>58:4 59:5,10<br>90:10 121:5,6<br>128:24 184:23  | <b>measures</b> 233:16<br>233:17<br><b>mechanical</b><br>206:22<br><b>mechanically</b><br>206:17<br><b>mechanics</b><br>188:19<br><b>mechanization</b><br>206:12   |
| <b>lose</b> 16:10 51:13<br>206:1,1  | <b>M</b>   | <b>manager</b> 108:3<br>108:5 139:20<br>208:7<br><b>Managers</b><br>107:18<br><b>manages</b> 156:19<br>208:1<br><b>managing</b> 109:2<br>154:12 214:9<br><b>mandated</b> 68:23<br><b>manner</b> 119:17<br><b>map</b> 17:18<br>158:19 216:3<br>230:11,15,19<br>230:22 231:2 | <b>math</b> 88:12<br>131:9<br><b>matter</b> 1:11<br>25:18 29:15<br>58:4 59:5,10<br>90:10 121:5,6<br>128:24 184:23<br><b>mature</b> 167:22<br><b>maturing</b> 40:19<br><b>maximum</b> 22:15<br>22:16<br><b>mean</b> 18:13,23<br>26:19 34:25<br>50:20 53:16<br>58:15,21 62:16<br>64:8 65:7 66:9<br>66:10 95:5,20<br>106:19 120:24<br>122:16 128:9<br>128:22,22<br>134:7 160:10<br>162:3 163:7<br>165:8 166:15<br>169:1 170:22<br>171:10 174:5<br>176:5 189:7<br>194:17 196:13<br>200:5 205:5<br>210:18 216:1 | <b>mechanization</b><br>206:12<br><b>median</b> 9:8<br><b>mediation</b> 5:25<br><b>mediator</b> 5:23<br>6:3,11<br><b>medium</b> 65:9<br><b>meet</b> 79:10,14<br>119:19 139:5<br>168:14,20<br>177:2 189:12<br>220:1,2<br><b>meeting</b> 43:8<br>47:2 78:19<br>79:13 80:18<br>166:1 219:4<br><b>meetings</b> 47:1<br>47:11 56:16,23<br>56:25 115:7<br>185:14 186:2,6<br>186:8,12 |
| <b>losses</b> 59:2,5,5,7<br>59:13   | <b>M</b>   | <b>maps</b> 17:19<br>159:1 230:9<br>231:16   | <b>mean</b> 18:13,23<br>26:19 34:25<br>50:20 53:16<br>58:15,21 62:16<br>64:8 65:7 66:9<br>66:10 95:5,20<br>106:19 120:24<br>122:16 128:9<br>128:22,22<br>134:7 160:10<br>162:3 163:7<br>165:8 166:15<br>169:1 170:22<br>171:10 174:5<br>176:5 189:7<br>194:17 196:13<br>200:5 205:5<br>210:18 216:1  | <b>meet</b> 79:10,14<br>119:19 139:5<br>168:14,20<br>177:2 189:12<br>220:1,2<br><b>meeting</b> 43:8<br>47:2 78:19<br>79:13 80:18<br>166:1 219:4<br><b>meetings</b> 47:1<br>47:11 56:16,23<br>56:25 115:7<br>185:14 186:2,6<br>186:8,12   |
| <b>lost</b> 27:23   | <b>M</b>   | <b>maintain</b> 89:22<br>194:2 220:9<br><b>maintenance</b><br>12:8 59:8<br>157:20 171:22   | <b>mean</b> 18:13,23<br>26:19 34:25<br>50:20 53:16<br>58:15,21 62:16<br>64:8 65:7 66:9<br>66:10 95:5,20<br>106:19 120:24<br>122:16 128:9<br>128:22,22<br>134:7 160:10<br>162:3 163:7<br>165:8 166:15<br>169:1 170:22<br>171:10 174:5<br>176:5 189:7<br>194:17 196:13<br>200:5 205:5<br>210:18 216:1  | <b>MELLOY</b> 1:11<br>5:1,11,14,17<br>5:20 6:21 7:7<br>7:10 24:11,14<br>26:3,13,18,21  |
| <b>lot</b> 8:14 10:11<br>16:13,18,23<br>17:18 25:9<br>28:23 63:20<br>81:11 96:15,15<br>97:10,13<br>104:18 115:11<br>123:6 128:22<br>153:22 171:21<br>173:6,8 175:4<br>181:16 204:11<br>228:5,21 232:6 | <b>M</b>   |  |  |  |
| <b>lots</b> 41:15 82:23   | <b>M</b>   |  |  |  |
| <b>low</b> 27:20 38:10<br>39:7 41:11<br>45:6 165:18<br>172:23 175:1<br>178:12   | <b>M</b>   |  |  |  |
| <b>lower</b> 9:24 43:10<br>46:21 47:6,13<br>55:13,25 56:3<br>68:11 70:3<br>72:22 73:1,3,4   | <b>M</b>   |  |  |  |

|  |  |  |   |  |
|--|--|--|---|--|
| 30:15,17 36:13<br>36:16 38:4<br>46:3,9 60:17<br>60:21,25 64:25<br>65:13 77:18,21<br>79:21,24 80:1<br>83:5,9 87:13<br>93:6,10 97:21<br>97:25 98:2,8<br>98:15,19,22<br>99:1,9,16,21<br>100:1,7,12,18<br>102:9 103:18<br>103:21 104:4,7<br>105:14 106:6<br>110:5,9 116:22<br>117:1 119:3,8<br>120:1,23<br>121:25 122:7<br>123:4,9,23<br>126:13 127:12<br>128:6,21<br>129:18 131:1<br>131:22 133:6<br>135:10 136:3<br>137:3 138:9,23<br>141:10 142:10<br>143:1 144:8<br>145:8 147:4,23<br>148:2,7,12,14<br>148:20,23<br>149:1,5,9,15<br>149:20,24<br>150:2,9,22<br>151:4,7,9<br>183:16,23<br>185:22 189:22<br>190:1 195:18<br>196:7 199:22<br>203:3,16 219:2<br>219:19 220:14<br>222:14,18,22<br>223:1,6,14,17<br>224:2,12,15,20<br>224:24 225:4,9<br>235:5,13,24<br>236:5 | <b>member</b> 42:13<br>42:15 85:5<br>111:22,23<br>113:10,12<br>114:2 169:13<br>219:5<br><b>members</b> 13:1,7<br>42:19 51:6<br>56:17,23 60:10<br>68:5,9 69:11<br>71:23 117:11<br>137:13,18<br>153:14,16,17<br><b>membership</b><br>42:17 43:6<br><b>memory</b> 10:7<br>81:19 91:22<br><b>mention</b> 5:21<br>183:24 184:8<br><b>mentioned</b><br>28:24 34:23<br>44:25 52:10<br>107:21 110:12<br>111:21 155:25<br>163:6 164:20<br>168:21 176:15<br>181:14 182:1<br>228:19 231:1,3<br><b>mentored</b> 15:16<br><b>mesa</b> 110:21<br>147:17 234:7<br><b>Mesilla</b> 63:18<br>87:2 190:11<br>192:11,14,22<br>208:19,25<br>209:10,17,20<br>209:20,24<br>230:21,24<br><b>met</b> 49:11,13<br>79:3 142:7,15<br>143:3<br><b>meter</b> 36:24<br>111:18 180:2<br>182:2,23,24<br>183:12<br><b>metered</b> 22:19<br>111:16,17 | 180:2 183:5,9<br>183:11<br><b>metering</b> 55:20<br>214:20,23<br>228:12<br><b>meters</b> 179:16<br>182:14 213:16<br>213:19<br><b>methods</b> 28:10<br>28:22<br><b>Mexico</b> 1:6 2:13<br>2:16,20,21 3:2<br>5:3,13 8:7,9<br>11:8 17:3<br>18:21 23:2,9<br>24:10 29:9,16<br>30:14 35:4,6<br>35:14 36:12<br>38:8 39:10<br>41:13,19,20,23<br>42:2,4,6,7,9,11<br>42:17,22 44:5<br>45:2,13 46:20<br>47:1,3 48:6,9<br>48:21,24 50:8<br>50:15 51:21<br>52:1,17 55:12<br>56:10 58:2,6,8<br>58:23 59:6<br>60:10 61:7<br>67:25 68:4,17<br>70:9 71:6,8,25<br>75:24 77:13<br>78:6,13 79:19<br>80:5,7 90:8,15<br>95:6 98:10,16<br>98:18 99:2,6<br>101:4,9,15,22<br>102:10,12,14<br>102:17 103:2<br>104:16 106:23<br>107:10 108:7<br>108:25 110:4<br>112:18,19,19<br>112:20,22<br>113:17,23,24<br>114:4 115:17 | 115:19,23<br>116:1 117:2,9<br>117:10,19<br>118:7 120:15<br>121:2,16,20<br>125:14 133:13<br>133:21 134:3<br>136:9,11,19<br>139:19,21<br>148:25 149:1,5<br>149:8 150:10<br>150:11,12,14<br>151:2,18,22<br>154:1,2 158:7<br>158:16 180:7,9<br>182:3 186:19<br>188:14 206:5<br>210:2 212:5<br>213:13 215:2,8<br>216:4 223:20<br>225:11,11,12<br>225:13,13,13<br>225:14,16<br>226:7,23<br>231:18 232:1<br>232:12 235:2,3<br>235:4<br><b>Mexico's</b> 74:17<br>100:21 107:20<br>119:12<br><b>Mexico/Mexico</b><br>59:11<br><b>MICHAEL</b> 1:11<br><b>microphone</b><br>106:7<br><b>middle</b> 40:13<br>49:15,23<br>106:15 160:8<br><b>Midwest</b> 113:18<br><b>mile</b> 63:18<br><b>miles</b> 20:8<br>145:10 151:22<br><b>million</b> 109:1<br>197:17,20<br>217:22 218:1<br><b>mine</b> 163:13<br>181:2 213:6 | <b>minimum</b><br>197:19<br><b>minute</b> 67:20<br>113:25<br><b>minutes</b> 148:8<br><b>missed</b> 94:7<br>151:2,4<br><b>missing</b> 40:21<br>91:4<br><b>mission</b> 119:14<br><b>misunderstand</b><br>6:15<br><b>misunderstood</b><br>87:20<br><b>mix</b> 165:1,11,15<br><b>Miyamoto</b> 96:9<br><b>modifier</b> 142:25<br><b>moisture</b> 28:3,5<br>28:16<br><b>mom</b> 15:16<br><b>moment</b> 7:24<br>78:13<br><b>money</b> 16:13,18<br>42:5 94:18<br>189:12<br><b>monitor</b> 111:19<br><b>monitoring</b> 15:1<br>15:7<br><b>monsoonal</b><br>40:18<br><b>Monte</b> 143:22<br><b>MONTGOM...</b><br>2:15<br><b>month</b> 34:9<br>89:25<br><b>monthly</b> 90:1<br><b>months</b> 47:11<br>78:17 86:13<br>167:15,17,20<br>168:1,5 227:4<br><b>morning</b> 5:2,9<br>5:12,15,18 7:2<br>7:21 61:3,4<br>83:12,14<br>185:17 236:1,6<br><b>mortgages</b><br>117:14 |
|--|--|--|---|--|

|                               |                                       |                        |                        |                                       |
|-------------------------------|---------------------------------------|------------------------|------------------------|---------------------------------------|
| <b>motion</b> 101:12<br>104:9 | <b>necessary</b> 51:23<br>75:22 112:7 | 208:21                 | 118:7 119:12           | <b>normal</b> 23:25<br>26:6 30:7 36:2 |
| <b>motivated</b> 49:10        | <b>need</b> 7:11 8:21                 | <b>never</b> 57:11,23  | 120:15 121:2           | 36:8 38:3                             |
| <b>mouse</b> 222:17           | 12:10 13:16                           | 82:17,20 87:12         | 121:16,20              | <b>north</b> 151:22                   |
| <b>mouth</b> 224:13           | 17:3,12 51:12                         | 101:15,17              | 125:14 129:22          | 216:9,10                              |
| <b>move</b> 79:18 82:5        | 54:11 77:11                           | 207:19                 | 133:13,21              | <b>note</b> 27:25                     |
| 87:2 110:3                    | 78:5 99:10,16                         | <b>new</b> 1:6 2:13,16 | 134:3 136:9,11         | <b>notes</b> 74:15                    |
| 116:7 172:7                   | 100:1 119:23                          | 2:20,21 3:2 5:3        | 136:19 139:19          | 80:18                                 |
| 176:3,14                      | 123:5 141:12                          | 5:13 8:7,9 11:8        | 139:21 141:19          | <b>notice</b> 18:3                    |
| 181:24 233:4                  | 142:10 146:9                          | 16:25 17:1,3           | 141:19 148:25          | 45:23 84:6,10                         |
| <b>moved</b> 87:9,12          | 149:9,20 150:2                        | 18:21 22:1             | 149:1,5,8              | 84:13                                 |
| 87:24 174:11                  | 168:4,23                              | 23:2,9 24:9            | 150:10,11,12           | <b>noticed</b> 186:24                 |
| <b>moving</b> 85:11,12        | 178:19,21                             | 29:9,16 30:13          | 150:14 151:2           | 187:3                                 |
| 87:9                          | 179:4 183:18                          | 35:4,6,13              | 151:18,22              | <b>notified</b> 94:22                 |
| <b>mow</b> 154:10             | 212:17 220:5                          | 36:12 38:7             | 154:1,2 158:6          | <b>notorious</b> 37:14                |
| <b>Muerto</b> 230:19          | 224:25 236:2                          | 39:10 41:12,19         | 158:16 172:19          | 37:23                                 |
| 234:7                         | <b>needed</b> 8:11                    | 41:20,23 42:2          | 180:7,9 182:3          | <b>November</b> 1:12                  |
| <b>multigenerati...</b>       | 9:10 53:24                            | 42:4,6,7,9,11          | 186:19 210:2           | 12:3 43:9 68:5                        |
| 118:12                        | 54:10 180:22                          | 42:17,22 43:10         | 212:5 213:13           | 70:18 71:13                           |
| <b>multiple</b> 153:12        | 182:20 194:20                         | 44:5 45:2,13           | 215:2,8 216:4          | 72:14,15                              |
| 181:7                         | 209:13,25                             | 46:20 47:1,3           | 223:20 225:11          | <b>number</b> 24:6                    |
| <b>municipal</b>              | 212:18 213:3                          | 48:6,9,21,24           | 225:11,12,13           | 27:3 28:17                            |
| 229:16                        | <b>needs</b> 9:4 42:9                 | 50:8,15 51:21          | 225:13,13,14           | 32:15,25 33:1                         |
| <b>municipalities</b>         | 46:21 60:1                            | 52:1,17 55:12          | 225:16 226:7           | 62:1 63:23                            |
| 58:17                         | 100:4 102:17                          | 56:9 58:2,6,8          | 226:22 231:18          | 64:1 72:12                            |
| <b>must've</b> 90:16          | 115:12 116:16                         | 58:23 59:6,11          | 232:1,12 235:2         | 81:18 88:25                           |
| <b>mute</b> 116:10,19         | 129:22                                | 60:10 61:7             | 235:3,4                | 90:17 111:10                          |
| 116:21,25                     | <b>negative</b> 57:5,15               | 67:1,25 68:4           | <b>newspaper</b>       | 117:12 118:11                         |
| 224:6,6,8                     | 137:17,25                             | 68:17 70:9             | 17:23 179:6,8          | 125:23,25                             |
| <hr/>                         | 138:1                                 | 71:6 78:12             | <b>Nice</b> 139:5      | 126:2 177:19                          |
| <b>N</b>                      | <b>negatives</b> 57:14                | 79:19 80:5,7           | 219:25 220:2           | 177:20 187:17                         |
| <b>N</b> 2:1                  | <b>negotiate</b> 218:23               | 90:8,15 95:6           | <b>nine</b> 235:21     | 189:5,15                              |
| <b>name</b> 24:15             | 219:7                                 | 98:10,15,18            | <b>NMPG</b> 80:16      | 198:14 208:11                         |
| 100:9,10                      | <b>negotiated</b> 47:8                | 99:2,6 100:21          | 96:12                  | 225:10 231:12                         |
| 114:14,16                     | 52:18                                 | 101:4,9,15,22          | <b>NMSU</b> 56:3       | <b>numbered</b> 43:25                 |
| 124:13 139:4                  | <b>negotiating</b>                    | 102:10,12,14           | 114:23                 | 69:19 72:14                           |
| 144:13 149:2,4                | 219:8                                 | 102:17 103:1           | <b>non-farm</b>        | <b>numbers</b> 92:17                  |
| 149:16 152:3                  | <b>negotiation</b>                    | 104:16 106:23          | 125:14                 | 121:19,21,24                          |
| 190:5 199:10                  | 77:25                                 | 107:10,19              | <b>non-farming</b>     | 130:14 204:3                          |
| 219:24 225:5                  | <b>negotiations</b>                   | 108:5,7,25             | 125:19                 | 210:25                                |
| <b>national</b> 113:12        | 47:5,14 96:2                          | 110:4 112:18           | <b>non-irrigated</b>   | <b>numerous</b> 25:16                 |
| 113:22                        | <b>neighbor</b> 15:16                 | 112:19,19,20           | 106:20                 | <b>nutrient</b> 175:2                 |
| <b>nationwide</b>             | <b>neighbor's</b> 84:2                | 112:22 113:17          | <b>nonagricultural</b> | <b>Nutt-Hocket</b>                    |
| 10:20,22                      | <b>neighboring</b>                    | 113:23,24              | 110:22                 | 230:22                                |
| <b>near</b> 207:1             | 19:17,21                              | 114:3 115:17           | <b>nonprofit</b> 41:22 | <hr/>                                 |
| <b>necessarily</b> 66:2       | <b>net</b> 53:21,21                   | 115:19,23              | <b>nonretained</b>     | <b>O</b>                              |
| 211:10                        | 86:10 208:3,11                        | 116:1 117:2,9          | 101:6 121:3            | <b>O</b> 2:1                          |
|                               |                                       | 117:10,19              |                        |                                       |

|                         |                          |                |                         |                        |
|-------------------------|--------------------------|----------------|-------------------------|------------------------|
| <b>O-W-M-A-N</b>        | 55:18 56:9               | 63:17 65:13    | 205:13,18               | 48:18 113:5            |
| 20:1                    | 214:23                   | 66:22 68:2     | 206:24 207:3            | 166:10,18              |
| <b>oath</b> 7:12        | <b>occasions</b> 25:17   | 69:9 70:1,16   | 208:6,17,23             | <b>opened</b> 201:10   |
| <b>object</b> 25:15,18  | <b>occupied</b> 213:7    | 70:20 72:3,7   | 209:12 210:2            | 214:8                  |
| 25:19,24,25             | <b>October</b> 160:3     | 73:7,24 76:20  | 210:11,16               | <b>operable</b> 111:15 |
| 116:3,8 141:6           | <b>offer</b> 24:9 26:12  | 79:3 80:3,10   | 211:7,13,17,22          | <b>operate</b> 144:1   |
| 146:9                   | 30:13 36:11              | 80:24 81:17    | 212:8,20,23             | <b>operates</b> 77:22  |
| <b>objected</b> 103:23  | <b>offered</b> 102:5     | 84:17 85:2,10  | 213:2,12,19,24          | <b>operating</b> 12:7  |
| <b>objecting</b> 116:9  | <b>offering</b> 105:5    | 86:2 88:2,14   | 214:2,12,17             | 15:3 18:22             |
| <b>objection</b> 24:11  | 105:13                   | 90:2,14,25     | 215:18 216:8            | 38:25 56:12,16         |
| 25:23 26:24             | <b>office</b> 2:21 17:14 | 91:5 98:15,19  | 216:10,10,14            | 56:20 57:2             |
| 30:15,16 36:13          | 21:1 29:22               | 107:2,21       | 217:11,21,25            | 58:24 77:2,7           |
| 77:15 79:21             | 31:10 52:23              | 108:19 112:10  | 218:9 219:10            | 77:10 78:4,10          |
| 100:16 102:4,7          | 62:6 68:17               | 113:2 115:16   | 219:15 223:14           | 95:21 109:15           |
| 103:24 110:5,6          | 71:24 78:22              | 117:1 123:5    | 224:12 230:5            | 117:14 118:2,2         |
| 116:6 118:23            | 79:4 109:1,2,4           | 126:14 132:10  | <b>old</b> 15:20 21:10  | 129:5,6,9,20           |
| 119:25 123:16           | 109:13,18                | 139:11 141:15  | 71:18 154:21            | 129:23 130:5           |
| 123:21 124:17           | 110:1 111:18             | 143:12 144:19  | 154:22                  | 130:10,16              |
| 124:18 126:9            | 178:23 179:1             | 145:11,15,18   | <b>older</b> 154:11     | 131:4,16,17            |
| 126:10 127:8            | 180:3,16,19              | 146:16 147:14  | <b>oldest</b> 156:18    | 132:15,21              |
| 128:4,17                | 182:18 188:19            | 147:20 151:24  | <b>once</b> 31:2 58:8   | 133:11 134:4           |
| 129:15,17               | 188:20 210:23            | 152:5,22 153:6 | 59:1                    | 145:11,15,15           |
| 130:20 131:19           | 211:3,9 212:20           | 153:18 154:6   | <b>one-third</b> 13:9   | 153:25 181:5           |
| 132:24 133:1            | 237:16                   | 155:8,15,25    | <b>ones</b> 32:15 90:10 | 185:11,15              |
| 135:6 136:1,22          | <b>officer</b> 69:16     | 156:4,9 157:1  | 96:12 234:1,3           | 186:3,9,12,22          |
| 137:2,15 138:5          | 108:6 119:5              | 158:5,15 159:9 | <b>onion</b> 125:25     | 186:25 187:10          |
| 138:6 142:9,18          | <b>Ogaz</b> 2:20 4:9     | 160:12 163:6   | 156:19,22               | 203:14 218:11          |
| 142:22 145:6            | 4:11 148:23,25           | 163:23 165:14  | 163:25 177:9            | 218:20,24              |
| 146:25 150:19           | 149:7 150:20             | 165:21 169:15  | 177:11 188:1            | 219:3,9,11,12          |
| 184:19 185:16           | 151:9,11,15              | 169:24 170:16  | 188:24 206:18           | <b>operation</b> 12:11 |
| 195:16 199:16           | 182:3,5 183:16           | 170:19,25      | 206:19,22               | 18:25 20:6             |
| 202:25 203:12           | 185:5,6,7,18             | 173:2 175:7    | <b>onions</b> 152:18    | 118:22 119:13          |
| 218:25                  | 185:20,25                | 179:24 182:1   | 155:3 156:11            | 119:16 125:7           |
| <b>objections</b>       | 186:2 189:18             | 182:16 183:7   | 157:8 159:14            | 125:19 152:1,3         |
| 104:23 105:9            | 195:16 199:16            | 183:15 185:9   | 159:20 160:4            | 156:24 157:2           |
| 150:20 185:1            | 202:25 203:12            | 185:25 190:15  | 161:12,14               | 161:10 181:15          |
| <b>obligations</b> 49:9 | 203:14 210:19            | 191:1,8,11,25  | 162:5,6 164:1           | 191:2 194:4,7          |
| 189:12                  | 218:25 220:15            | 192:16 193:18  | 164:9,10,13,16          | 194:7 205:5            |
| <b>observations</b>     | 220:18 222:12            | 193:22 194:2   | 164:18 165:7            | <b>operations</b> 9:25 |
| 105:6                   | 223:4,5,10               | 194:10 196:6   | 165:20 168:7            | 23:22 29:24            |
| <b>observing</b> 185:2  | <b>Oh</b> 70:14 79:25    | 197:3,8,11,22  | 168:17 174:17           | 36:6 37:25             |
| <b>obtain</b> 16:11     | 117:8                    | 198:17,20,25   | 174:22 177:6,7          | 38:3 60:12             |
| 212:6                   | <b>okay</b> 5:7 8:4      | 200:18 201:1   | 188:2,5,22              | 109:5,22 118:6         |
| <b>obtained</b> 73:14   | 31:6 32:9                | 201:24 202:14  | 189:1,10                | 126:2,6,18,19          |
| 74:2                    | 37:11 46:8,10            | 202:21 203:21  | 206:15,15,17            | 138:4 152:8,10         |
| <b>obviously</b> 28:10  | 60:21 61:9,25            | 204:4,8,14,18  | 206:17,20               | 152:11 157:1           |
| 46:22 51:9              | 62:11 63:4,10            | 204:22 205:1   | <b>open</b> 13:19       | 177:22 189:6           |

|                         |                        |                         |                         |                         |
|-------------------------|------------------------|-------------------------|-------------------------|-------------------------|
| <b>operator</b> 119:18  | 31:10,24 32:15         | <b>owned</b> 108:10     | 48:17 68:6,7            | 59:23                   |
| <b>opinion</b> 26:12    | 32:19 33:1,24          | 108:19 111:2            | 69:19 71:4              | <b>parts</b> 71:12      |
| 101:21 136:20           | 61:17 62:6             | 117:11                  | 73:11 74:12             | 72:14 197:17            |
| 136:24                  | 80:19 90:9,11          | <b>owner</b> 19:25      | 75:14 80:17             | 197:20 217:22           |
| <b>opportunities</b>    | 90:13                  | 83:18 84:12,14          | 81:8,11 214:7           | 218:1                   |
| 42:5                    | <b>OSE's</b> 70:2      | 84:19 208:6             | 218:14                  | <b>Paseo</b> 2:16 3:2   |
| <b>opportunity</b>      | <b>outcome</b> 131:10  | <b>ownership</b>        | <b>paragraphs</b>       | <b>Paso</b> 58:18       |
| 18:4 53:7               | 145:25 146:5           | 154:15 229:24           | 43:25                   | <b>passed</b> 15:15     |
| 56:19 79:15             | 146:10,18,22           | <b>owns</b> 110:22      | <b>pardon</b> 224:22    | 82:17,20 104:1          |
| 84:13 103:8             | 147:8,11               | 208:1                   | <b>part</b> 11:20 15:5  | <b>pasture</b> 145:20   |
| 121:2 199:11            | <b>outcomes</b>        | <hr/> <b>P</b> <hr/>    | 26:8 29:23              | <b>patterns</b> 72:23   |
| <b>orchard</b> 41:9     | 130:16,18              | <b>P</b> 2:1,1 234:16   | 30:9,25 38:2            | <b>pay</b> 11:23 13:5   |
| 204:17,19               | <b>outline</b> 233:15  | <b>p.m</b> 236:7        | 40:20 49:21             | 31:14 39:15             |
| <b>orchards</b> 11:5    | <b>outlined</b> 158:9  | <b>package</b> 188:1    | 51:22 57:16             | 59:12 111:25            |
| 39:23 41:15,17          | 158:11                 | 189:11                  | 62:17 63:2              | 157:21 165:25           |
| <b>order</b> 6:2,5,7,8  | <b>output</b> 128:3    | <b>packing</b> 154:13   | 76:17 79:9              | 169:21,24               |
| 13:21,22 16:12          | <b>outside</b> 7:13    | <b>page</b> 4:3 8:10    | 94:7 109:14             | 170:3 179:5             |
| 23:16 38:1              | 141:6 145:7            | 11:9 12:21              | 131:14 143:15           | 207:19                  |
| 49:18,20 50:8           | 192:5,8,21,21          | 18:21 19:3              | 177:21 181:6            | <b>paying</b> 15:7 51:9 |
| 50:13 51:22             | 192:21 222:6           | 23:3 29:10              | 194:3,7 195:9           | 170:6                   |
| 55:20 70:23             | <b>overall</b> 63:2    | 33:5 35:5,12            | 202:23 206:1            | <b>payment</b> 12:24    |
| 94:3 96:4               | 231:23                 | 35:14 38:7              | 209:18 210:25           | <b>pays</b> 15:5        |
| 100:22 166:7            | <b>overlooked</b>      | 39:11,11,22             | 228:13 234:16           | 157:19 170:1            |
| 194:18,18               | 210:14                 | 48:16,16 49:18          | <b>part-time</b>        | <b>PDF</b> 70:20 72:7   |
| 200:10                  | <b>overrule</b> 26:24  | 49:20 50:4,12           | 188:10                  | 74:9,9 75:12            |
| <b>ordered</b> 75:23    | 147:6                  | 50:24 51:4,17           | <b>partial</b> 92:22    | <b>peak</b> 40:10       |
| <b>orders</b> 13:24     | <b>overruled</b>       | 51:17,25 52:14          | <b>participate</b>      | <b>pecan</b> 8:18       |
| 34:7                    | 142:10,21              | 53:9 65:2               | 48:24 184:24            | 10:20 15:18             |
| <b>ordinance</b>        | 145:8                  | 69:18,19 70:23          | <b>participated</b>     | 18:25 23:6              |
| 234:14                  | <b>oversight</b> 181:1 | 70:25,25 71:3           | 10:1 55:24              | 41:19,21,23             |
| <b>ordinary</b> 24:18   | 228:18,18              | 74:10 80:6,14           | 58:7 94:20              | 42:1,4,7,12,17          |
| 26:23                   | <b>oversized</b> 217:5 | 100:22 233:25           | <b>participating</b>    | 44:5 45:2               |
| <b>organization</b>     | <b>owed</b> 16:13,18   | <b>pages</b> 70:22,22   | 56:9 184:18             | 47:17,20,21             |
| 41:20,25 42:3           | <b>OWMAN</b> 20:4      | 232:23 233:22           | <b>particular</b> 20:11 | 48:2,12,17,24           |
| 42:8 74:25              | 20:21 33:22            | 233:23 237:6            | 23:19 24:17             | 49:12 50:1              |
| 153:8                   | 54:4,6 62:5,9          | <b>paid</b> 31:12 57:25 | 27:9,12 31:22           | 51:21 52:1,17           |
| <b>organizations</b>    | 62:23 63:2,6           | 118:3 140:2             | 31:25 50:8              | 55:12 58:2,6            |
| 10:20 43:19             | 87:10,24 97:1          | 154:3 157:18            | 66:15 89:21             | 58:23 60:10             |
| 113:7 152:23            | 181:2,3,4,13           | <b>paper</b> 104:10     | 159:8 161:13            | 68:4,8 69:10            |
| <b>organize</b> 112:11  | 207:23,24,25           | <b>papers</b> 99:22     | 163:9,10 166:9          | 71:22 73:14             |
| <b>original</b> 1:1 5:2 | 207:25 208:13          | 134:7,21                | 181:1 221:2             | 74:2 75:2 79:7          |
| 15:13 21:20             | 208:20 209:18          | <b>paperwork</b>        | <b>parties</b> 5:4,24   | 79:16 80:7,20           |
| 27:8 98:9               | 209:25 210:8           | 96:15                   | 6:6 49:10 94:4          | 86:16 95:6              |
| <b>originally</b>       | 210:11,13,15           | <b>paragraph</b>        | 98:10 103:5             | 125:24 128:10           |
| 151:21 154:16           | 210:17,17,25           | 11:21 19:12             | 184:17,18,22            | 159:15,22,23            |
| 184:15                  | 211:19,23              | 43:13,25 48:11          | 237:10,14               | 160:9                   |
| <b>OSE</b> 22:24        | 212:4,16 213:4         |                         | <b>partnership</b>      | <b>pecans</b> 8:11 9:7  |

|  |  |   |   |   |
|--|--|---|---|---|
| 9:10,21 10:22<br>13:14 41:4,12<br>45:1 46:21<br>47:6,13 52:7<br>82:9 86:14<br>96:5,22 97:12<br>97:16 204:9,12<br>204:14<br><b>people</b> 42:6<br>43:21 112:14<br>128:23 154:12<br>184:12 187:21<br>188:21,23<br><b>per-acre</b> 13:2<br>131:11<br><b>Peralta</b> 2:16 3:2<br><b>percent</b> 58:1<br>164:8,9<br><b>percentage</b><br>164:4 203:25<br>205:13<br><b>perception</b><br>121:5<br><b>perceptions</b><br>103:11,17<br>122:24<br><b>percipient</b> 25:14<br>26:9<br><b>percolates</b> 10:11<br><b>perfected</b> 206:13<br><b>perfectly</b> 114:8<br><b>perforations</b><br>217:3,8<br><b>performance</b><br>127:4 130:9,12<br>135:20 195:15<br>195:23 228:10<br>228:14<br><b>period</b> 18:3<br>52:12 76:3<br>108:2,18 118:4<br>119:7 141:21<br>154:19 155:2<br>171:9,23 200:3<br>200:20 201:8<br>227:8<br><b>periodically</b> | 22:24<br><b>periods</b> 118:1<br><b>permanent</b><br>128:10<br><b>permission</b><br>85:11 211:5,12<br><b>permit</b> 17:3 18:2<br>19:5,15,16<br>20:7,25 21:9<br>21:17,19 22:8<br>22:16 64:10,11<br>64:15,18,24<br>65:16,22 66:7<br>66:16 67:2<br>83:17 84:5,9<br>93:14 178:19<br>178:21,23,25<br>179:3,5,5,25<br>182:2 199:15<br>210:18 211:8<br>234:8<br><b>permits</b> 18:7<br>19:3,3 21:1,4,5<br>21:18,25 22:4<br>22:14 178:18<br>197:22 229:17<br>234:6<br><b>permitted</b> 18:16<br>103:16 198:1<br>199:4 203:22<br>203:25<br><b>permitting</b><br>18:14<br><b>personal</b> 88:5<br>96:18 109:6<br>110:12 118:25<br>119:5 121:5<br>123:24 230:1<br><b>personally</b> 41:11<br>123:15<br><b>personnel</b><br>188:21<br><b>perspective</b> 54:6<br>77:23,24 88:8<br>89:3<br><b>phase</b> 104:2,14<br><b>PhD</b> 226:17 | <b>Phil</b> 55:8<br><b>Phoenix</b> 175:13<br><b>phrased</b> 135:7<br><b>physical</b> 62:24<br><b>physically</b> 31:12<br>62:16<br><b>phytophthora</b><br>162:9 221:16<br><b>pick</b> 234:1<br><b>picked</b> 206:10<br>206:15<br><b>picture</b> 40:25<br><b>piece</b> 180:17<br>210:5<br><b>pieces</b> 105:10<br>165:20 192:19<br><b>pima</b> 159:14<br>164:24<br><b>pink</b> 26:15<br>162:5<br><b>pipe</b> 172:2<br><b>piped</b> 193:14,16<br>193:19<br><b>pipelines</b> 227:11<br><b>pipng</b> 166:10<br>166:16 172:2<br><b>place</b> 34:7 44:13<br>118:18 130:7<br>134:8 166:6<br>210:11 233:16<br>235:23<br><b>placed</b> 13:24<br><b>places</b> 210:1<br><b>Plaintiff</b> 1:4 2:3<br><b>plan</b> 56:4 74:14<br>75:1,19 83:18<br>84:12 145:16<br>229:15,16<br>230:16 231:18<br>231:20,24,24<br>231:25 232:8<br>232:10,18<br>233:1,2,10,12<br>233:12,22<br>234:11,15<br>235:15,15,19<br><b>planning</b> 78:25 | 114:22 231:23<br>232:15,20<br><b>plans</b> 20:1,4<br>84:14,20<br>120:18 137:23<br><b>plant</b> 88:17<br>125:1 137:20<br>160:24 161:1<br>161:13,24<br>162:6,10,15,20<br>163:8,13,22<br>169:10 177:5<br>181:17 188:9<br>221:17 228:8<br><b>planted</b> 143:14<br>160:2,4,5<br>161:3 164:8<br><b>planting</b> 165:20<br><b>plantings</b> 128:10<br><b>plants</b> 125:23,24<br><b>platform</b> 108:16<br><b>plays</b> 128:2<br><b>please</b> 12:5<br>16:21 17:10<br>27:1 30:18<br>34:21 38:6<br>39:12 44:4<br>57:6 59:17<br>70:14 89:16<br>90:15 99:12<br>107:9 110:4<br>115:23 118:9<br>124:3 130:19<br>136:7 141:14<br>142:12 147:7<br>149:11,16<br>194:5 207:13<br>213:12 215:5<br>215:20 218:5<br>224:3 225:6<br>226:7,14 230:6<br>230:10<br><b>pledged</b> 127:19<br><b>plot</b> 90:20,23<br><b>plugged</b> 217:3,7<br><b>plus</b> 48:1<br><b>POD</b> 168:17 | 177:2,3<br><b>PODs</b> 168:13<br><b>point</b> 30:3 45:25<br>94:8 122:22<br>139:25 157:1<br>183:19 196:12<br>230:7,7 235:6<br>235:9<br><b>pointed</b> 63:13<br><b>pointing</b> 129:13<br><b>policies</b> 136:25<br><b>policy</b> 45:18<br>46:2 78:25<br><b>poor</b> 204:20<br><b>pop</b> 71:3 91:10<br><b>population</b><br>231:6 232:16<br>233:14<br><b>portfolio</b> 134:15<br>135:5,16<br>146:21<br><b>portion</b> 117:12<br>127:15 135:16<br>138:16 143:15<br><b>portions</b> 163:11<br><b>position</b> 58:24<br>78:22 100:20<br>102:10,12<br>103:2 105:24<br>107:23 108:1,4<br>114:24 125:13<br>140:23,24<br>141:4,4,16,17<br>219:12<br><b>positive</b> 57:4,7<br>57:13<br><b>possibility</b> 84:7<br><b>possible</b> 44:1<br>58:13 91:13<br>128:9<br><b>Possibly</b> 24:4<br><b>POST</b> 2:21<br><b>pot</b> 45:12<br><b>potential</b> 100:25<br>101:10 233:13<br><b>potentially</b><br>233:7 |
|--|--|---|---|---|

|                         |                        |                        |                         |                         |
|-------------------------|------------------------|------------------------|-------------------------|-------------------------|
| <b>pound</b> 164:25     | 44:22 76:23            | <b>proceed</b> 60:25   | 138:19 146:20           | <b>properties</b> 54:20 |
| <b>pounds</b> 164:10    | 122:9 130:14           | 93:9 100:13            | <b>products</b> 118:16  | 62:8 110:23,24          |
| <b>power</b> 37:1       | 134:20 139:6           | 151:10                 | <b>professional</b>     | 110:25 111:13           |
| <b>practical</b> 132:13 | 165:7,9 184:7          | <b>proceeding</b>      | 105:24 113:7            | 143:19 152:16           |
| <b>practice</b> 50:22   | 185:24 195:10          | 48:18 49:3             | 226:11,15,21            | 153:13 155:13           |
| 51:8 52:10              | 213:6                  | 94:25                  | 226:22                  | 157:17 181:16           |
| <b>practices</b> 20:22  | <b>previous</b> 49:9   | <b>proceedings</b> 1:9 | <b>proffered</b>        | 192:2 198:4             |
| 52:24 88:22             | <b>previously</b> 7:17 | 1:13 236:7             | 103:15                  | 217:13 222:6            |
| <b>practicing</b> 57:19 | 41:25 52:2             | 237:8                  | <b>proffering</b> 103:7 | <b>property</b> 10:15   |
| <b>praise</b> 74:23     | 86:15 96:13            | <b>process</b> 17:6,11 | 121:17                  | 16:16 84:1              |
| <b>pre-basin</b> 234:5  | 150:15                 | 18:14,17 62:6          | <b>program</b> 54:4,6   | 109:6 111:23            |
| <b>precisely</b> 26:11  | <b>price</b> 163:4     | 62:7,9,24 63:2         | 55:23 87:24             | 127:23 152:16           |
| <b>prefer</b> 174:22    | 165:12 177:13          | 63:6 84:15             | 158:19 159:1            | 158:9,11                |
| 220:6                   | <b>prices</b> 161:18   | 114:19 118:16          | 181:14 206:4,5          | 159:12 164:8            |
| <b>preliminaries</b>    | 165:4                  | 119:22,24              | 207:23,24,25            | 165:20,21               |
| 223:3,8,23              | <b>primary</b> 109:17  | 123:6 152:17           | 208:13,21               | 180:17 192:14           |
| <b>prepare</b> 140:16   | 117:21 229:9           | 156:19 188:3,4         | 209:18 210:8            | 205:17 210:5            |
| 232:7                   | <b>principally</b>     | 188:5,6 210:22         | 210:13,17,17            | 211:2,4 215:25          |
| <b>prepared</b> 232:1   | 229:14                 | <b>processed</b>       | 210:20 211:8            | 216:20 217:11           |
| 232:3 235:16            | <b>print</b> 51:3      | 168:14                 | 213:4 215:12            | <b>proposal</b> 74:12   |
| <b>present</b> 52:23    | <b>prior</b> 16:19     | <b>processing</b>      | 215:13 229:23           | 74:15,16,19             |
| 53:7 79:15              | 24:21 36:19            | 125:24 138:12          | <b>prohibit</b> 145:12  | 75:1,3 79:4             |
| 103:8 134:13            | 56:15 141:3,15         | 152:17 156:19          | <b>project</b> 14:6,7   | 211:14                  |
| 135:8 229:5             | 194:22 200:12          | 188:9 189:6            | 14:11,16,21             | <b>proposed</b> 5:23    |
| 230:3                   | 201:14,21              | <b>processors</b>      | 39:7 41:12              | 43:19 44:15             |
| <b>presentation</b>     | 227:6 235:21           | 168:13                 | 57:16 68:24             | 68:9 71:5 95:7          |
| 130:1 134:11            | <b>priority</b> 51:23  | <b>produce</b> 9:6     | 74:18 75:23             | 114:17                  |
| <b>presented</b> 55:5   | 56:6 60:3,4            | 24:2,6 30:9            | 76:5,7,14,23            | <b>protect</b> 154:2    |
| 61:6 68:1 70:9          | 74:21 75:20            | 111:5 162:7,24         | 77:22 82:3              | 218:12,20               |
| 78:15 81:6              | 76:18,21 77:12         | 168:2 174:19           | 112:1,5 128:2           | 219:13                  |
| 94:4,16 95:25           | 78:5,9 155:17          | 175:4                  | 131:25,25               | <b>protected</b> 71:19  |
| 96:1,3 102:13           | <b>private</b> 228:11  | <b>produced</b>        | 136:12 154:4            | 208:12,16               |
| <b>presenting</b> 47:9  | 231:13 234:18          | 108:15 138:17          | 202:12 228:13           | <b>protest</b> 18:5,18  |
| 47:12 200:21            | <b>probably</b> 40:11  | 138:18                 | <b>projected</b>        | 70:2 79:4 84:7          |
| 229:17                  | 114:19 115:3,9         | <b>producers</b>       | 233:16                  | 84:13 179:10            |
| <b>presents</b> 233:13  | 122:13 141:20          | 109:16                 | <b>projections</b>      | <b>protesting</b> 95:12 |
| <b>president</b> 42:13  | 160:8 209:5            | <b>produces</b> 217:10 | 163:3 232:16            | <b>prove</b> 44:11 53:1 |
| 113:23 152:24           | 217:5                  | <b>producing</b>       | 233:3,14,15             | 53:2,4 54:13            |
| 153:9                   | <b>probe</b> 28:19,20  | 160:10 204:18          | <b>projects</b> 106:3   | 55:22 81:2              |
| <b>pressure</b> 161:23  | 167:13,13              | 204:19                 | 108:7 227:16            | 199:11 200:16           |
| 161:25 162:2            | <b>problem</b> 57:18   | <b>product</b> 132:22  | 228:4,5,8,15            | 200:24                  |
| 162:11 166:11           | 105:1 205:21           | <b>production</b>      | 228:21,22               | <b>proved</b> 71:17     |
| <b>Preston</b> 3:6      | <b>problems</b> 37:14  | 67:23 125:12           | <b>prolonged</b> 203:5  | 80:23                   |
| 149:3                   | 37:23 184:10           | 128:9,14,19            | <b>proof</b> 199:25     | <b>proven</b> 54:11     |
| <b>preston.hartm...</b> | 184:14                 | 203:8 204:21           | 200:4,5,25              | <b>provide</b> 18:3     |
| 3:9                     | <b>procedures</b>      | <b>productivity</b>    | <b>proper</b> 122:5     | 101:20,25               |
| <b>pretty</b> 30:20     | 137:1                  | 137:7,22               | <b>properly</b> 182:15  | 103:20 106:4            |



|   |  |   |   |   |
|---|--|---|---|---|
| 111:18 117:15<br>119:17,19<br>125:11 133:12<br>167:25 226:2<br>228:17 229:22<br>233:19<br><b>provided</b> 6:25<br>139:19,25<br><b>provides</b> 115:6<br>117:11<br><b>providing</b><br>139:22<br><b>public</b> 84:6,13<br>102:20<br><b>pull</b> 106:23<br>115:23 140:5<br>158:6 159:6<br>180:7 182:3<br>188:21<br><b>pulls</b> 28:16<br><b>pump</b> 22:1 57:8<br>61:22 63:11<br>216:22,23,24<br>217:5 220:4,9<br>227:11<br><b>pumped</b> 92:4<br>112:9 128:16<br>201:14,17,20<br>217:6<br><b>pumping</b> 37:16<br>38:2 59:7<br>72:19 75:16<br>77:12 78:5<br>102:25 112:6<br>136:10,19<br>145:12 157:22<br>171:20,24<br>186:15 203:9<br>213:9<br><b>purchase</b> 12:10<br>189:14<br><b>purchased</b> 19:21<br>204:20<br><b>purpose</b> 12:4<br>23:15 35:23<br>70:1,5 71:5<br>74:16 84:4 | 89:19 101:16<br>101:18<br><b>purposes</b> 8:8<br>30:4 45:22<br>69:10 90:5,9<br>92:19 93:20<br>150:15 193:2<br><b>push</b> 21:23<br>176:19<br><b>pushing</b> 25:13<br><b>put</b> 8:7 9:1<br>13:16,21 16:6<br>16:19 17:12,21<br>17:23 25:7<br>28:12 34:19<br>44:13 49:7<br>51:2 52:2,12<br>53:21 54:10<br>59:11 64:2<br>66:2 67:9,12<br>86:8 89:15<br>92:1,7 94:19<br>96:19 107:3<br>113:15 114:14<br>136:18 152:8<br>181:7 191:19<br>191:21,22<br>198:22 208:20<br>211:4 213:19<br><b>putting</b> 17:18<br>20:23 35:1<br>44:9<br><hr/> <b>Q</b> <hr/> <b>quake</b> 21:13<br><b>qualifications</b><br>103:8<br><b>qualified</b> 121:8<br>122:17 128:20<br><b>quality</b> 34:14<br>67:17,24<br>128:13,15,19<br>130:9,12<br>135:20 162:25<br>172:23 175:8<br>175:10 176:25<br>177:7 183:25 | 184:1 196:4<br>197:15,16<br>228:6<br><b>quantification</b><br>121:24<br><b>quantity</b> 67:18<br>132:20 194:15<br>217:16<br><b>quarterly</b><br>111:18 180:3<br>183:14<br><b>question</b> 7:2<br>25:10 45:20<br>62:5 63:22<br>71:21 73:13<br>76:2,11 78:1,2<br>82:15 94:6<br>95:15 117:8<br>119:10 124:2<br>133:2,3,5<br>135:7,10<br>141:13 142:4<br>142:11,22<br>147:7,14 186:1<br>195:20 200:8<br>201:24 203:17<br>209:4,8 215:5<br>216:17 219:21<br><b>questions</b> 6:15<br>28:25 32:6<br>60:16,19,20<br>83:4,7 93:8<br>96:25 97:19<br>129:4 138:22<br>138:25 143:6<br>144:7 149:21<br>185:9 189:21<br>196:18 220:13<br>220:16 222:13<br>224:16 235:7<br>235:11<br><b>quickly</b> 224:9<br><b>quite</b> 53:3 89:12<br>92:21 115:6<br>201:4 202:4<br>227:15<br><b>quote</b> 218:12 | 219:13<br><b>quoting</b> 71:23<br><hr/> <b>R</b> <hr/> <b>R</b> 2:1,1 3:12<br><b>R-O-D-N-E-Y</b><br>149:18<br><b>rain</b> 11:3 202:5<br><b>rainfall</b> 11:7<br>125:2<br><b>rains</b> 40:19<br><b>raise</b> 6:19 99:11<br>149:10 224:3<br><b>raising</b> 68:8<br>102:6<br><b>ran</b> 108:17<br><b>ranch</b> 110:19,20<br>147:15,19<br>205:5<br><b>ranch</b> 106:18<br><b>ranching</b> 106:19<br>106:20 110:24<br><b>rangeland</b><br>106:20<br><b>rate</b> 6:7 122:12<br>164:15,21<br>169:25 170:1<br>228:3<br><b>rational</b> 103:17<br><b>rationally</b><br>103:10<br><b>rattling</b> 7:5<br><b>rdeitchman@...</b><br>2:12<br><b>reached</b> 46:25<br>46:25 49:22<br>80:20<br><b>read</b> 44:20 58:9<br>68:24 89:25<br>217:18,23<br>218:16<br><b>reading</b> 28:17<br><b>readings</b> 111:18<br>180:2 183:13<br><b>ready</b> 148:14<br>185:4 223:23<br><b>real</b> 108:12 | 109:6,14<br>110:17,21<br>117:13,24,25<br>122:19<br><b>realized</b> 58:10<br><b>really</b> 28:21<br>37:10 40:5<br>41:9 54:15<br>58:15 60:5<br>64:21 70:5<br>83:25 175:1<br>176:1 181:16<br>207:19,19<br>221:3<br><b>realm</b> 57:7<br>65:12<br><b>rear</b> 33:1<br><b>reason</b> 6:1 8:21<br>19:16 132:5<br>140:12,14<br>163:15 174:14<br>183:25 222:8<br><b>reasons</b> 21:11<br>62:22 159:2<br><b>recall</b> 72:1 82:8<br>83:19 91:2<br>93:14,24 95:18<br>133:14 149:2<br>155:5 182:10<br>196:12 204:2<br>213:17,18,21<br><b>recap</b> 29:11 90:4<br><b>receive</b> 67:22<br>114:25 172:9<br>201:6<br><b>received</b> 19:10<br>27:14 150:17<br>180:15,19<br>182:13,16<br>194:16 201:4<br>202:4<br><b>receiving</b> 182:10<br><b>recess</b> 98:7<br>148:13 183:22<br>223:15 235:25<br><b>recite</b> 69:13<br><b>Reclamation</b> |
|---|--|---|---|---|

|   |   |   |  |   |
|---|---|---|--|---|
| 56:13 75:22<br>77:2,7 113:20<br>134:3 185:12<br><b>Reclamation's</b><br>82:1<br><b>recognition</b><br>88:21,23<br><b>recognize</b> 11:15<br>19:4 20:5<br>29:16 35:7<br>42:23 43:3<br>45:2,15 48:7<br>68:3 80:11<br>106:24 158:11<br>158:17 180:9<br>182:5<br><b>recognized</b><br>20:22 32:24<br>46:12 51:2<br><b>recognizes</b> 83:23<br><b>record</b> 15:20<br>26:24 37:20<br>91:6 98:9<br>100:8,17 117:1<br>118:24 139:7,8<br>149:16 159:4<br>164:23 223:18<br>225:6 226:10<br>234:25<br><b>records</b> 15:20,22<br>16:3 23:24<br>25:13 29:1<br>30:7 36:19<br>37:25 96:18<br>150:18 159:5<br><b>recovery</b> 233:7<br><b>red</b> 106:10<br>206:12 230:13<br><b>redirect</b> 4:5,11<br>93:7,11 147:24<br>220:14,17<br><b>redo</b> 235:18<br><b>reduce</b> 178:7<br><b>reduced</b> 76:25<br>146:23<br><b>reduces</b> 145:25<br>146:5 147:9 | <b>reducing</b> 63:10<br><b>reduction</b> 101:1<br>101:11<br><b>refer</b> 43:18<br>135:11 153:1<br>195:5<br><b>reference</b> 23:4<br>53:11 75:4<br>97:14<br><b>references</b> 81:13<br>233:18<br><b>referring</b> 43:14<br>69:9 71:11<br>99:23 149:25<br>197:6 224:21<br><b>refers</b> 26:14<br>76:13<br><b>reflect</b> 24:24<br>37:13 39:17<br>223:18<br><b>reflective</b> 38:17<br>38:23<br><b>reflects</b> 48:12<br>92:11<br><b>regard</b> 61:10<br>62:5 132:13<br>212:21 226:3<br><b>regarding</b><br>128:19 203:13<br><b>Regardless</b> 9:3<br><b>region</b> 9:10<br>10:25 101:21<br>128:3 140:25<br>141:2,24 147:2<br>147:5<br><b>regional</b> 10:20<br>121:4<br><b>register</b> 84:19<br><b>Registration</b><br>237:23<br><b>regs</b> 43:6 44:20<br><b>regular</b> 177:21<br>194:3,6,10,21<br>237:10,12<br><b>regulated</b> 50:11<br>90:11<br><b>regulation</b> 90:7 | <b>regulations</b><br>43:10 47:3<br>68:10,21 69:8<br>69:10,13 71:5<br>71:25 82:16,19<br>82:22 85:6<br>214:21 215:2,7<br>215:11,15<br>229:21<br><b>regulatory</b> 103:1<br>120:19<br><b>reinstalled</b><br>182:24<br><b>rejected</b> 75:2,8<br><b>related</b> 14:22<br>125:15,20<br>138:4 210:4<br><b>relates</b> 37:15<br><b>relating</b> 101:14<br>120:8<br><b>relationship</b><br>108:6 118:13<br>137:12 139:20<br>229:1<br><b>relative</b> 216:3<br>226:15<br><b>release</b> 16:8<br>166:3 170:9,12<br>170:14<br><b>releasing</b> 170:16<br><b>relevance</b> 103:3<br>103:23 116:3<br>119:25 120:3<br>136:1 142:9<br>145:6<br><b>relevant</b> 102:13<br>116:4 122:14<br><b>reliable</b> 37:16<br><b>reliance</b> 120:9<br><b>reliant</b> 153:23<br>171:16<br><b>relief</b> 102:15,16<br>102:18 103:4<br>104:2,12<br>121:22,23<br>122:2 135:23<br>136:8 | <b>relies</b> 214:19<br><b>rely</b> 173:22,25<br>187:2 194:17<br>202:15<br><b>relying</b> 34:10<br><b>remain</b> 228:4<br><b>remained</b> 29:4<br>62:12<br><b>remaining</b> 33:3<br>33:7 61:13,16<br>61:17 62:3,22<br>63:5 89:18<br><b>remains</b> 63:12<br>63:13 103:24<br>223:20<br><b>remedies</b> 101:8<br>104:2,14<br><b>remember</b> 14:12<br>24:4 30:11,12<br>38:20 46:14<br>47:24 48:1,22<br>49:6 56:21<br>64:8 69:12<br>84:10 92:15<br>93:3 124:1<br>140:19 179:7<br>200:23 201:5<br>213:13 214:1<br><b>remind</b> 7:11<br><b>remnant</b> 20:21<br><b>remnants</b> 20:17<br>20:19<br><b>REMOTELY</b><br>1:12<br><b>remove</b> 178:10<br><b>removed</b> 182:23<br><b>removing</b><br>178:14<br><b>renew</b> 101:12<br><b>rent</b> 157:13,18<br>157:19 158:3<br>198:7 205:17<br>215:25<br><b>rental</b> 152:16<br>155:12 157:18<br>198:4 205:17<br>211:4 215:25 | 216:20 217:11<br><b>rented</b> 180:17<br>210:5<br><b>renting</b> 157:15<br>198:6<br><b>repair</b> 171:22<br><b>repaired</b> 182:24<br><b>repairing</b> 188:18<br><b>repairs</b> 12:10<br>157:20<br><b>repayments</b><br>135:21<br><b>repeat</b> 136:5<br>141:12 186:1<br>194:5 195:20<br>207:13 209:4<br>215:5<br><b>repeated</b> 142:11<br><b>repeating</b><br>142:22<br><b>rephrase</b> 134:17<br>200:9 209:8<br>215:6 221:19<br><b>replace</b> 21:14,16<br>171:23 172:21<br><b>replaced</b> 216:19<br>216:20,21<br>217:9,19<br><b>replacement</b><br>21:5,9,17<br>129:13 172:19<br>172:20<br><b>report</b> 134:9<br>135:1 183:12<br>217:17 230:12<br>234:11,22<br><b>reported</b> 1:13<br>134:20<br><b>reporter</b> 1:13<br>87:16 237:4<br><b>REPORTER'S</b><br>4:14<br><b>Reporters</b><br>237:23<br><b>represent</b> 24:16<br>42:20 139:18<br><b>represented</b> |
|---|---|---|--|---|

|                                     |                          |                |                       |                         |
|-------------------------------------|--------------------------|----------------|-----------------------|-------------------------|
| <b>representing</b><br>144:15 190:7 | 169:23                   | 7:14 9:22 10:6 | 198:8 199:6           | 82:17,19 83:19          |
| <b>requests</b> 137:24              | <b>rest</b> 34:10        | 10:7 14:8      | 201:15,18             | 94:5,17 102:24          |
| <b>require</b> 167:23               | 190:15                   | 26:16 31:4     | 202:11,12,19          | 106:15 109:16           |
| 168:13,18                           | <b>restate</b> 76:11     | 32:13,14 33:8  | 202:23 203:16         | 110:25 112:1,5          |
| 169:3 194:24                        | 78:2 94:6                | 33:16 34:24    | 204:22 207:22         | 115:1 118:10            |
| <b>required</b> 72:21               | 124:3 136:7              | 35:17 36:19    | 208:16 210:6          | 118:18 120:6            |
| 111:17 182:2                        | 146:3                    | 38:4 43:16,22  | 210:14 212:10         | 123:1 125:10            |
| 213:16 232:11                       | <b>restricted</b>        | 48:14,23 50:2  | 214:4,12,15,24        | 126:15 128:1            |
| 232:13                              | 146:18                   | 60:4,4,17 64:8 | 215:18,23             | 131:25 133:22           |
| <b>requirement</b>                  | <b>restricts</b> 146:11  | 66:13,15 67:3  | 216:2 218:7,24        | 133:23 140:25           |
| 9:16 10:5,8                         | <b>result</b> 47:14 55:9 | 67:15,19 68:3  | 219:13,15             | 141:2,9,24              |
| 72:20 73:3,9                        | 68:21 132:14             | 69:11,12,20,24 | 221:9 222:18          | 142:6,15,20             |
| 75:8,10 80:25                       | 136:17                   | 70:7,8,18 75:3 | 222:22 224:3          | 145:5 152:24            |
| 81:22                               | <b>resulted</b> 82:7     | 75:11,25 76:3  | 224:24 225:4          | 153:1 157:17            |
| <b>requirements</b>                 | 131:17                   | 76:4,7,15,25   | 225:19 226:6          | 202:8,22                |
| 48:20 54:25                         | <b>resume</b> 5:20       | 78:25 80:12,21 | 226:10 227:21         | 230:12,13               |
| 177:2                               | 6:17 7:10,14             | 81:5,20,21,25  | 229:7 230:3,5         | <b>ripple</b> 126:8     |
| <b>requiring</b> 212:6              | 101:23 140:5,7           | 82:5,15 83:1   | 230:15 231:1,5        | <b>risk</b> 123:14      |
| <b>research</b> 16:3                | 140:13,16                | 83:24 85:15,20 | 231:16,17             | 124:7,21,22             |
| <b>reservoir</b> 77:1               | 226:6,8,13               | 86:12,18 88:10 | 234:5,22              | 134:14 135:17           |
| <b>reservoirs</b> 13:20             | <b>retained</b> 101:5    | 88:11 89:9     | 235:22,24             | 143:23                  |
| <b>resistant</b> 162:16             | 106:1                    | 90:11 91:6,8   | 236:5                 | <b>risks</b> 146:1,7,24 |
| <b>resolved</b> 49:16               | <b>retains</b> 8:22      | 91:15 94:9,13  | <b>right-hand</b>     | 147:10                  |
| 94:12                               | <b>retire</b> 228:23     | 94:25 98:2,8   | 19:11                 | <b>river</b> 38:10      |
| <b>resource</b> 43:7                | <b>retired</b> 101:23    | 99:1,2,11,16   | <b>rights</b> 17:16   | 44:21 59:6              |
| 68:10 75:4,19                       | 105:25 107:22            | 100:7,12 103:4 | 20:2 53:23            | 63:18 152:4,14          |
| 82:16 109:19                        | 125:7 135:9              | 112:25 115:20  | 71:18 100:25          | 152:15 156:23           |
| 214:18 232:4                        | 139:11,12,15             | 121:21,23      | 111:1,3,5,7           | 175:21 205:5            |
| <b>resources</b> 43:15              | <b>return</b> 163:5      | 122:7,17 133:6 | 125:8 127:20          | 234:12                  |
| 43:16 71:7                          | 229:19 234:10            | 139:16 140:7   | 127:21 174:13         | <b>riverbeds</b> 59:9   |
| 94:19 208:2                         | <b>returns</b> 234:12    | 140:21,21      | 174:15 208:25         | <b>RMs</b> 69:22        |
| 214:10                              | <b>review</b> 58:3       | 144:17 145:21  | 209:7 229:17          | <b>robust</b> 232:14    |
| <b>respect</b> 191:1                | 109:21 232:5             | 146:13 147:21  | 229:24 232:20         | <b>rock-throwing</b>    |
| <b>respond</b> 26:2                 | <b>reviewing</b>         | 148:2,12,14    | 233:11 234:13         | 216:6                   |
| <b>responded</b> 75:11              | 131:15                   | 149:5,10 150:9 | 234:17                | <b>rocks</b> 196:1      |
| <b>responds</b> 75:17               | <b>Rich</b> 98:14        | 150:22,25      | <b>Rincon</b> 192:15  | <b>Rodeo</b> 112:19     |
| <b>response</b> 24:2,7              | 139:4 148:18             | 158:7,24       | 192:19,22             | <b>Rodney</b> 149:17    |
| 30:10 46:15,24                      | 219:24                   | 164:23 170:3   | 193:1,5,7             | 151:12                  |
| 70:18 72:16                         | <b>Richard</b> 2:9       | 172:13,21      | 208:19 209:2          | <b>role</b> 42:11       |
| 113:15                              | <b>Richardson</b>        | 173:12 176:8   | <b>Rio</b> 9:24 43:11 | 123:11 124:4            |
| <b>responsibilities</b>             | 79:12                    | 177:16 178:2   | 46:21 47:6,13         | 128:1 139:22            |
| 109:12 154:11                       | <b>Richardson's</b>      | 179:2,10 181:4 | 55:13,25 56:3         | 139:23 142:7            |
| 227:7,25 228:1                      | 78:24                    | 185:4 190:9,16 | 68:11,23,24           | 142:16 143:3            |
| <b>responsibility</b>               | <b>rid</b> 44:17 58:16   | 190:24 191:4   | 70:3 72:22            | <b>room</b> 99:5,19     |
| 130:6                               | 58:20                    | 191:12,19      | 73:4 74:14,18         | 149:22 184:1            |
| <b>responsible</b>                  | <b>riders</b> 14:24      | 192:3,5,9,17   | 74:24 75:23           | 224:17                  |
|                                     | <b>right</b> 5:1,7 7:9   | 192:24 197:23  | 76:2,3 81:7           | <b>root</b> 9:19 162:5  |

|                  |                  |                  |                  |                  |
|------------------|------------------|------------------|------------------|------------------|
| 162:5,24         | S 2:1,9          | 221:3            | 51:19 65:1       | seeing 14:13     |
| 167:14 172:7     | S's 19:19        | Santa 2:16,21    | 70:13,24,25      | 46:14 122:19     |
| 176:4,12,14,19   | S-H-A-Y-N-E      | 3:2 67:6         | 71:3 72:18       | 231:25 235:1     |
| 187:14 221:16    | 149:18           | Sarah 2:4 5:10   | 74:10,11 75:17   | seeking 136:9    |
| roots 9:5 41:8   | S&L 113:15       | 24:16 83:12      | 77:18,19 80:6    | seen 11:16 40:12 |
| 162:7            | Sacramento       | saturated        | 85:14 99:6,9     | 40:21 41:11      |
| Roswell 72:24    | 2:10             | 196:15,17        | 99:10 104:1      | 84:24 103:24     |
| rot 168:16 177:6 | safe 156:23      | saved 130:2      | 121:25 136:3     | 138:19           |
| 221:16           | Saints 110:16    | saves 34:17      | 199:10 216:16    | sees 207:15      |
| rotate 161:11,21 | 111:3            | saw 20:7 58:9    | 218:17           | sell 177:12,14   |
| 162:10           | salaries 12:9    | 64:10 207:16     | secretary 114:18 | send 7:3         |
| rotating 162:12  | Salem 207:4      | 224:13           | section 50:12    | sending 6:8      |
| rotation 159:5   | sales 154:14     | saying 32:7 66:8 | 51:5,18,25       | sends 175:13     |
| 161:7,9 163:2    | salinity 175:24  | 67:21 73:20      | 52:14,15 53:9    | senior 71:18     |
| 164:6            | 176:10,23        | 77:14 78:7       | 75:25 234:8      | 108:6 139:20     |
| rotational       | 177:4,13 178:8   | 101:9 116:24     | sector 125:16    | sense 27:13 32:6 |
| 161:16,24        | 187:3,6 222:11   | 184:21           | 228:11           | 58:22            |
| roughly 42:19    | Salopek 4:3 7:10 | says 29:11 33:6  | secure 125:3     | sensitive 204:9  |
| 177:16 190:19    | 7:16,21,22       | 33:19 48:23      | 127:18           | sent 43:5 46:23  |
| 190:25 191:3     | 24:15 27:1       | 68:25 71:10      | sediments 197:5  | 78:16 80:7       |
| 198:17,20        | 29:10 30:18      | 74:11 76:18      | see 7:24 11:22   | 183:1 212:10     |
| 214:16 215:3     | 36:17 38:6       | 82:4 122:17      | 19:9,10,12,18    | sentence 53:13   |
| 219:10           | 39:12 43:1       | 139:12 214:8     | 23:3 27:8,11     | 72:18 74:16      |
| round 170:10     | 45:14,24 46:11   | 214:18 218:17    | 27:16,19,25      | 75:18 76:18      |
| row 31:7 153:12  | 48:12 51:20      | SCADA 227:15     | 28:4,16 29:10    | 214:17 218:17    |
| RPR 237:19       | 60:15 61:3       | scheduled 49:2   | 29:12 31:9       | separate 108:10  |
| ruggedized       | 65:15 71:21      | school 156:20    | 32:19,23 33:1    | 234:21           |
| 108:15           | 83:12 93:13      | science 107:12   | 33:18 36:1       | September        |
| Rule 103:10      | 120:13 185:19    | scope 100:21     | 38:9,12,14,15    | 14:14 93:2       |
| rules 56:7 68:9  | 199:9            | 141:6 145:7      | 38:22 40:5       | 160:4,25 161:5   |
| 71:5,24 85:6     | salt 162:21      | 199:17 218:25    | 43:1,14 44:2     | 228:25           |
| 179:24 184:16    | 174:18           | screen 5:6 67:9  | 49:19,21 53:11   | series 47:4      |
| 191:23           | salts 162:24     | 67:14 184:17     | 53:12 65:15,19   | 108:23 233:17    |
| run 93:1 189:9   | 163:15,20,22     | sdalrymple@...   | 65:24 70:14      | 234:12           |
| 194:24 206:25    | 172:1,5,7        | 2:18             | 72:13 75:24      | Serrano 54:5     |
| 217:4            | 174:12 175:1,2   | SEAL 237:16      | 76:1,16 80:7     | 88:8 180:22,24   |
| running 20:9     | 175:21 176:3,7   | season 9:22      | 81:13,15 87:17   | 182:19 212:9     |
| 39:9 179:8       | 176:14,19        | 10:18 20:16      | 98:11,20 114:1   | 212:14,20,23     |
| runs 207:5,6     | 177:8 178:10     | 27:5,6,10,22     | 123:4 158:8      | served 113:23    |
| rural 107:16,18  | 178:13 187:8     | 28:1,8,9 32:19   | 180:7,12,22      | 231:9            |
| 113:11 119:16    | 187:14 217:7     | 35:25 40:20      | 184:12 207:10    | server 130:2     |
| 119:20           | Sammis 96:8      | 57:20 89:23      | 207:15 214:10    | serves 10:7      |
| Ryan 180:22      | sample 175:12    | 90:4 159:25      | 214:21 218:21    | 81:20 91:23      |
| 181:2 182:19     | 175:13           | 160:23 189:19    | 224:8 230:13     | service 6:13     |
| 182:25           | sandier 82:13    | seasonal 187:24  | 230:21 235:25    | 113:21 230:17    |
|                  | 169:2            | 187:25           | 236:5            | services 6:10    |
| S                | sandy 8:16       | second 19:6      | seed 162:19,19   | 106:4 108:12     |

|   |   |   |  |  |
|---|---|---|--|--|
| 108:25 117:12<br>117:16<br><b>serving</b> 6:11<br><b>session</b> 5:5 98:11<br>148:16<br><b>sessions</b> 5:25<br><b>set</b> 5:25,25<br>141:19 184:15<br>214:20<br><b>Seth</b> 218:13<br><b>sets</b> 85:21<br><b>setting</b> 228:4<br><b>settle</b> 186:14<br><b>settled</b> 116:13<br><b>settlement</b> 47:18<br>47:20 48:2,12<br>48:17 49:14,22<br>50:1 54:22<br>55:2 80:16<br>82:7 181:6<br><b>setup</b> 24:21<br><b>Seven</b> 154:22<br><b>seven-year</b><br>118:1<br><b>severe</b> 41:6<br>189:7<br><b>shallow</b> 64:4,13<br>65:3,4,7,7,8,25<br>65:25 66:5,9<br>66:10,12,14,17<br>66:18,21 67:5<br>67:22 93:18,19<br>145:4<br><b>SHANE</b> 4:9<br>151:12<br><b>share</b> 71:8 74:18<br>143:23,23<br>154:3,4 217:12<br>217:14<br><b>shared</b> 143:20<br><b>sharpness</b><br>184:13<br><b>Shayne</b> 149:8,17<br>149:18<br><b>sheet</b> 38:19<br><b>Shelly</b> 2:15<br>98:18 | <b>shifting</b> 205:1<br><b>ship</b> 188:1<br><b>shipping</b> 126:1<br>154:14 189:2<br><b>shocked</b> 57:25<br><b>Shomaker</b> 232:3<br><b>shop</b> 182:24<br><b>short</b> 145:19<br>183:19 201:8<br>205:25 233:4<br><b>shortage</b> 75:21<br>76:8,14,15,19<br>76:23 95:16<br>144:22 145:16<br>205:22 206:7<br><b>shorter</b> 118:3<br><b>shorthand</b> 1:13<br>112:23 237:4<br><b>Shorthand/Co...</b><br>1:13<br><b>show</b> 17:17<br>24:21 53:5<br>79:16 90:12<br>92:4 106:25<br>150:18<br><b>showed</b> 81:4<br>92:24 96:10,22<br><b>showing</b> 44:7<br>47:12 96:4,19<br>107:3 180:8<br><b>shown</b> 64:11<br>160:13 230:9<br>231:2<br><b>shows</b> 27:2 62:4<br>66:16 217:21<br>230:16,17,19<br><b>shut</b> 166:17<br>201:9<br><b>sick</b> 40:4<br><b>side</b> 30:21 113:9<br>138:15 216:13<br>233:13<br><b>sidebar</b> 27:24<br><b>sides</b> 128:23<br><b>signature</b> 43:2<br>50:5<br><b>signed</b> 47:20 | 57:12 80:11<br>185:15 186:9<br>186:22,25<br>187:10<br><b>significant</b> 17:25<br>94:3 120:14<br>135:16 136:18<br>169:3 203:18<br>231:12<br><b>signifying</b> 23:18<br><b>similar</b> 24:24<br>25:12 72:23<br>126:22 156:10<br>166:15<br><b>SIMMONS</b> 2:4<br>2:9<br><b>simply</b> 25:9<br>37:24 46:1<br>124:25 125:9<br>128:15 203:10<br>210:12 211:8<br><b>single</b> 208:3<br><b>sir</b> 26:17 30:5<br>43:23 62:14<br>80:22 106:13<br>107:2 108:20<br>109:23 110:12<br>114:6 140:8<br>145:14,23<br>147:17 149:2<br><b>sister</b> 59:20<br><b>sit</b> 92:10<br><b>sites</b> 195:15,22<br><b>sitting</b> 186:18<br><b>situated</b> 148:8<br><b>situation</b> 14:18<br>53:22 115:14<br><b>situations</b><br>114:22<br><b>six</b> 219:10<br><b>size</b> 29:7 168:12<br>168:14,18,19<br>177:1,2,7<br><b>sizes</b> 168:20<br><b>skins</b> 177:9<br><b>sklaln@soma...</b><br>2:6 | <b>Slash</b> 110:19<br>147:15<br><b>slide</b> 91:3<br><b>slides</b> 38:20<br><b>slip</b> 68:14<br><b>Sloan</b> 143:20,22<br><b>slow</b> 222:17<br><b>small</b> 19:7<br>106:14 143:15<br>165:19 181:17<br><b>smaller</b> 8:19<br>21:13 198:14<br>228:21 234:13<br><b>Society</b> 107:17<br>113:10<br><b>soil</b> 8:14 9:3,7<br>10:11 28:18,20<br>28:22 82:13<br>162:20 167:13<br>167:13,13<br>168:7,7,21,23<br>168:25 172:4<br>176:21 177:17<br>178:10 187:9<br>187:13 203:9<br>221:3<br><b>soils</b> 8:15,16,21<br>160:19 169:2,4<br>169:5 178:8<br>187:8<br><b>solid</b> 227:19<br>228:3<br><b>solids</b> 175:15,18<br>217:22<br><b>SOMACH</b> 2:4,9<br><b>somebody</b> 84:20<br>113:19 184:3,6<br><b>somewhat</b><br>134:23 169:8<br><b>son</b> 143:22<br>156:18<br><b>soon</b> 13:23,25<br>223:7<br><b>sorry</b> 16:21<br>30:24 32:10<br>48:6,16 69:18<br>70:2 72:15,17 | 74:1 76:17<br>77:20 78:13<br>94:7 100:14<br>104:6 107:13<br>120:22 122:3<br>124:21 142:12<br>142:24 146:3<br>149:2,4 151:4<br>171:3 185:20<br>192:13 199:9<br>203:15 205:9<br>219:5 221:25<br>222:16<br><b>sort</b> 37:14 97:2<br>188:1,25 205:8<br>216:17<br><b>sorting</b> 125:24<br>125:25<br><b>sought</b> 103:5<br><b>sounded</b> 57:4<br><b>sounds</b> 25:9<br>104:18<br><b>soup</b> 45:12<br><b>source</b> 36:22<br>64:13 66:16<br>115:3 117:19<br>125:3 192:8<br><b>sources</b> 11:9<br>115:8<br><b>south</b> 106:15<br>110:19 230:21<br><b>southeast</b> 11:2<br><b>southern</b> 101:3<br>101:22 109:14<br>112:19,20,22<br>118:7 152:24<br>153:1<br><b>Southwestern</b><br>108:11<br><b>speak</b> 104:7<br><b>special</b> 1:11<br>106:3 108:6<br>207:23<br><b>specialized</b><br>125:21 138:12<br>138:14<br><b>specific</b> 106:3 |
|---|---|---|--|--|

|  |   |  |  |   |
|--|---|--|--|---|
| 141:1 142:3<br>169:9 177:19<br>193:15 200:14<br>200:15 210:24<br>211:2<br><b>specifically</b><br>141:6 172:5<br>174:6 175:20<br>222:10<br><b>specifics</b> 102:5<br><b>specified</b> 6:7<br><b>speculation</b><br>77:16<br><b>speculative</b><br>203:12<br><b>spell</b> 100:9<br>149:15 225:5<br><b>spend</b> 123:6<br>177:16<br><b>spent</b> 18:25<br>47:11 59:18<br>115:11,18<br>124:15 178:6<br><b>spilling</b> 51:17<br><b>split</b> 59:3<br><b>splitting</b> 57:19<br><b>spot</b> 122:9<br><b>spray</b> 162:18<br><b>spreadsheet</b><br>27:2 30:19<br><b>spring</b> 40:3<br>166:1<br><b>sprinkler</b> 11:5<br><b>stability</b> 125:2<br><b>stable</b> 29:5,6<br>127:6<br><b>stack</b> 53:19 85:3<br>85:7,8,10,13<br>85:22,25 86:2<br>174:13,15<br>191:11<br><b>stacked</b> 53:12<br>86:15 198:13<br>198:22<br><b>stacking</b> 53:14<br>85:4,18,19,19<br>85:25 174:3 | 191:15<br><b>staff</b> 74:24 79:11<br>80:19 188:20<br>228:6 232:6<br><b>stage</b> 121:22<br><b>Stahmann</b> 15:16<br><b>stain</b> 177:8<br><b>staining</b> 177:9<br><b>stake</b> 153:22<br><b>stakeholders</b><br>56:2<br><b>stamp</b> 19:10<br><b>stand</b> 80:4 224:1<br><b>standards</b><br>113:14 168:20<br><b>standing</b> 100:16<br><b>standpoint</b><br>125:5<br><b>stands</b> 31:10<br><b>start</b> 16:8 27:3<br>28:4,6,7 29:25<br>38:11 50:11<br>61:6 65:11<br>93:13 99:10<br>107:24 157:2,6<br>158:5 184:14<br>205:1 215:3,9<br>222:1 223:2<br>226:6,24<br><b>started</b> 5:2 10:2<br>10:17 28:1<br>36:17 39:1<br>109:3 148:15<br>152:5,6 153:8<br>154:7,9,16<br>155:21 157:5,7<br>160:6 162:22<br>178:14 201:21<br>202:8,12 205:3<br>205:10,11<br>214:15 221:22<br>227:9<br><b>starting</b> 16:5<br>41:14 47:9<br>91:24 185:23<br>200:6<br><b>starts</b> 233:2 | <b>state</b> 1:3,6,6 2:3<br>2:13 3:5 5:13<br>5:16 17:4,7,9<br>17:14 19:10<br>20:1 21:2 22:4<br>22:23 24:16<br>31:11,15 42:6<br>43:9 44:12<br>46:15,20,23<br>47:5 49:12<br>50:11 52:23,24<br>55:19,23 62:6<br>68:18 69:16,17<br>70:17 71:15,16<br>71:17,20,24<br>72:2,4,6 73:2,3<br>73:13,20 74:1<br>74:11 75:3,11<br>75:14,16 76:13<br>77:11 78:4,18<br>79:4,9,14<br>80:16 83:13<br>84:16 93:18,23<br>95:8 96:1<br>98:14,18 100:8<br>100:15,17,21<br>102:23 107:10<br>107:18,19<br>108:7 109:14<br>111:19 112:18<br>112:19 113:12<br>113:16 117:18<br>117:20 149:4,8<br>149:15 154:1<br>178:24 179:1<br>179:11 180:3<br>180:16,19,21<br>181:6 182:14<br>182:17,18<br>199:25 200:21<br>210:21,23<br>211:3,9,15<br>212:21 214:8<br>215:2,8 225:5<br>226:14,19<br>229:21 232:12<br>234:25 237:4 | <b>stated</b> 22:8<br>202:18 219:12<br>237:5<br><b>statement</b> 73:17<br>74:4,6<br><b>states</b> 1:1 3:11<br>5:4,19 6:25 7:6<br>18:17 25:23,23<br>71:6 72:16,17<br>73:13 74:2<br>94:20 98:23,25<br>102:3 104:8,11<br>110:8 144:14<br>144:16 148:21<br>190:7 214:18<br>223:19<br><b>statewide</b><br>141:23,25<br><b>stating</b> 180:16<br>182:14<br><b>stations</b> 227:11<br><b>status</b> 82:21,24<br>103:6 237:11<br><b>stayed</b> 165:9<br><b>stays</b> 165:7<br>169:11<br><b>step-by-step</b><br>214:19<br><b>stick</b> 28:19<br><b>stint</b> 109:9,11<br><b>stop</b> 21:7 49:8<br>57:10 58:18,22<br>87:18 170:16<br>235:9<br><b>stopped</b> 14:6<br><b>storage</b> 57:16,16<br>57:20,23 77:1<br>125:24 206:21<br>227:11 233:7<br><b>strategic</b> 78:25<br><b>stream</b> 48:8<br>54:23 55:11,18<br>57:11 59:8<br>81:12 94:2,11<br>94:21 114:3<br>140:10<br><b>Street</b> 2:5 3:13 | <b>stricken</b> 128:18<br><b>strong</b> 74:20<br><b>structured</b><br>119:14<br><b>struggling</b> 40:6<br><b>studies</b> 9:24<br>10:24,25 96:11<br>96:15<br><b>study</b> 10:2,15,16<br>44:7 94:4 96:8<br>96:9 160:19<br><b>stuff</b> 87:17<br>108:24<br><b>subject</b> 8:6<br>78:19 101:7<br>105:9<br><b>submission</b><br>150:16<br><b>submit</b> 179:6<br>180:2 200:25<br><b>subpoena</b> 24:3,7<br>30:10<br><b>subsequent</b> 16:1<br>27:10<br><b>substance</b><br>131:14,14<br><b>substantive</b><br>223:22<br><b>subsurface</b><br>166:11 176:11<br><b>subtract</b> 32:3,4<br><b>subtracting</b><br>179:18<br><b>sudden</b> 5:6<br>44:10 57:21,24<br><b>sued</b> 134:3<br><b>suffering</b> 202:8<br><b>sufficient</b> 7:8<br>26:4,22 40:13<br>125:11<br><b>suggest</b> 92:16<br><b>suggesting</b> 37:23<br>93:17<br><b>suggests</b> 25:13<br><b>Suite</b> 2:5,10<br>3:13 237:24<br><b>sulfur</b> 172:4 |
|--|---|--|--|---|

|                         |                         |                         |                         |                         |
|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>sulfuric</b> 172:6   | 134:18                  | 171:13 172:9            | 204:23 211:19           | 93:22,22                |
| <b>sum</b> 86:10        | <b>sure</b> 6:21 15:2   | 173:22,25               | 211:23 212:4            | 112:11 180:21           |
| <b>summarize</b>        | 16:13 27:3              | 174:7,8,10,22           | 212:16 217:12           | 182:19 192:20           |
| 17:10 39:12             | 33:5 44:6 65:2          | 175:4,5,11              | 227:14,15               | 193:23 215:22           |
| <b>summarized</b>       | 71:21 76:13             | 178:12,16               | <b>systems</b> 11:5     | 219:2                   |
| 234:9                   | 79:13 81:11,15          | 179:21,23               | 188:19 229:14           | <b>talking</b> 37:9     |
| <b>summary</b> 90:3     | 85:4 92:3               | 187:1 191:5,6           | <hr/> <b>T</b> <hr/>    | 38:19 43:9              |
| 104:10 208:4            | 104:10 107:10           | 191:8,11,16,23          | <b>T</b> 2:1            | 49:11 62:17,19          |
| 229:9,22 233:3          | 116:3 117:4             | 192:4 194:16            | <b>table</b> 104:15     | 62:20 64:16,22          |
| 233:5                   | 123:8 124:4             | 197:7 198:9             | 121:23 232:22           | 68:15,16 83:16          |
| <b>summer</b> 40:8,13   | 133:7 136:8             | 201:7 208:8             | <b>tables</b> 233:18    | 115:11 121:10           |
| 167:17,20               | 139:7 142:13            | 215:24 220:4,6          | <b>tag</b> 149:4        | 127:12 145:24           |
| 168:5 202:4             | 147:8 153:16            | 220:8                   | <b>take</b> 6:14 7:24   | 146:15 153:3            |
| <b>summertime</b>       | 154:4 155:10            | <b>surge</b> 216:24     | 13:14 16:9              | 174:6 193:2,7           |
| 156:21                  | 155:18 191:20           | <b>surges</b> 217:2     | 48:6 51:7,25            | 195:18 196:10           |
| <b>supervise</b> 227:13 | 194:6 196:5,8           | <b>surprised</b> 57:25  | 71:7 85:21              | 196:11 197:3,4          |
| 232:5                   | 197:12 198:25           | <b>surrounding</b>      | 87:1 90:14              | 197:11,14               |
| <b>supervision</b>      | 200:8,10 204:2          | 231:15                  | 98:4 106:24             | 210:18,19               |
| 23:13 29:21             | 205:6 207:5             | <b>survive</b> 56:8     | 140:4 148:7             | 213:13 229:20           |
| 35:21 232:2             | 211:10 215:6            | <b>suspend</b> 75:15    | 158:15 180:18           | <b>talks</b> 74:12 81:9 |
| <b>supervisory</b>      | 235:13                  | 77:12 78:5              | 182:20,21               | <b>tanks</b> 227:12     |
| 227:14                  | <b>surface</b> 11:11,14 | <b>suspensions</b> 26:8 | 183:18 184:3,3          | <b>tape</b> 176:11      |
| <b>supplement</b> 11:6  | 12:14 13:11             | <b>sustain</b> 104:23   | 184:6 191:18            | <b>tasks</b> 14:22      |
| 16:7 112:5              | 14:22 15:9              | 126:13 129:18           | 197:25 198:1            | 15:17                   |
| 144:20 171:10           | 34:4,5,12,14            | 131:22                  | 199:24 204:1            | <b>taupe</b> 27:17      |
| 188:13 201:13           | 38:14,17,18             | <b>sustained</b>        | 211:7 223:4             | <b>tbarfield@so...</b>  |
| <b>supplemental</b>     | 39:2 50:21              | 101:15                  | 229:7 232:7,22          | 2:11                    |
| 17:13 19:19             | 51:7 54:16,17           | <b>swap</b> 209:19      | 233:24 235:25           | <b>TDS</b> 165:17       |
| 21:18,19,25             | 54:19 55:20             | <b>swear</b> 99:11,12   | <b>taken</b> 212:1      | 197:17,19               |
| 22:10 111:5             | 58:19 60:4              | 149:10,11               | 224:9,10                | 217:25                  |
| <b>supplementing</b>    | 62:18,21 69:23          | 224:4                   | 237:11                  | <b>Tease</b> 40:1       |
| 6:23                    | 73:15 85:12,22          | <b>sweeter</b> 206:19   | <b>takes</b> 72:22      | <b>tech</b> 17:15       |
| <b>supply</b> 41:12     | 90:23 91:1,14           | <b>switch</b> 213:12    | 78:13 118:18            | <b>technical</b> 7:25   |
| 66:1,16 74:18           | 91:17 92:1,5,7          | 223:7                   | 175:12 202:6            | 196:16 228:18           |
| 76:25 85:20             | 111:3 112:1,6           | <b>switching</b>        | <b>talk</b> 11:13 17:14 | <b>technically</b>      |
| 91:19,21,23             | 125:10 127:20           | 223:12                  | 19:2 31:1 42:7          | 193:5 202:6             |
| 92:13,15,22             | 127:22 128:2            | <b>sworn</b> 7:17       | 43:12 64:21             | 205:7                   |
| 127:7 164:19            | 128:11,14               | 105:17 151:13           | 85:3 87:16              | <b>techniques</b>       |
| 170:20,22,24            | 137:6 144:25            | 224:3 225:22            | 106:12 121:19           | 113:18                  |
| 181:23 194:19           | 144:25 145:19           | <b>system</b> 9:20      | 121:19,21               | <b>techs</b> 183:1      |
| 231:23 232:16           | 146:5,11,18             | 14:13 15:8              | 122:9,13,14,15          | <b>tell</b> 23:4 66:10  |
| 233:5,6                 | 147:12 155:6            | 48:9 54:23              | 122:25 123:23           | 87:18 89:20             |
| <b>support</b> 109:7    | 156:13 162:23           | 55:11,18 59:8           | 236:2                   | 91:1 93:1               |
| 127:2 153:25            | 163:14,17               | 81:12 94:2,11           | <b>talked</b> 54:4      | 107:8 112:12            |
| <b>supporting</b>       | 165:14,19,23            | 94:21 166:10            | 61:13 65:1              | 119:11 126:6            |
| 153:24                  | 165:24 167:8            | 166:16,20               | 77:21 87:8              | 126:18 133:19           |
| <b>Supreme</b> 1:1      | 169:15 171:4            | 176:9 201:9             |                         | 151:16,24               |

|                         |                        |                      |                         |                         |
|-------------------------|------------------------|----------------------|-------------------------|-------------------------|
| 152:13                  | 50:7 54:5              | 24:3,16 42:2         | 190:2 192:17            | 128:24 130:11           |
| <b>temporarily</b>      | 77:24 101:9            | 56:9 58:8            | 192:24 193:9            | 133:7 139:6             |
| 75:15                   | 103:16 104:22          | 68:23 71:8,25        | 208:23 219:16           | 146:10 164:24           |
| <b>ten</b> 42:14 154:22 | 114:9 121:7,12         | 75:24 77:4,6         | 219:18 222:12           | 183:18 184:15           |
| 227:4 235:20            | 131:1 141:8            | 77:13 78:6           | 222:22,25               | 184:25 193:3,3          |
| <b>tenants</b> 86:25    | 145:25                 | 83:13 98:9,12        | 223:25 224:15           | 195:24 196:6            |
| <b>tend</b> 165:19      | <b>testifying</b> 97:8 | 98:14 100:15         | 225:4,20 229:8          | 198:6 202:21            |
| <b>tense</b> 135:8      | 118:25 134:19          | 101:12 102:14        | 229:25 236:6            | 207:4,23,24             |
| <b>tensiometer</b>      | 140:17 230:1           | 103:2,22             | <b>thanking</b> 78:20   | 212:1,8 214:3           |
| 28:12                   | <b>testimony</b> 6:17  | 123:20 132:6         | <b>Thanks</b> 197:13    | 214:14 224:10           |
| <b>tensiometers</b>     | 8:8 24:17              | 133:13 135:23        | <b>that'd</b> 128:11    | 224:12                  |
| 28:20                   | 25:10,14,18            | 136:9,12,14          | <b>Theresa</b> 2:8      | <b>thinking</b> 17:17   |
| <b>term</b> 43:18       | 54:24 55:2,5           | 139:5 144:6          | <b>thick</b> 196:25     | <b>third</b> 71:3 74:15 |
| 50:17,20 53:14          | 61:10 69:15            | 146:24 147:2,5       | <b>thickness</b> 195:6  | 80:17 118:14            |
| 65:6 74:4 79:1          | 81:11 83:20            | 147:10,13            | 195:8,14,21             | <b>thought</b> 45:17    |
| 118:1 161:7             | 87:21 91:12            | 148:16,19            | 196:3,9,14,15           | 87:6,8 92:12            |
| 163:6 170:20            | 92:19 98:3             | 150:15,23            | 196:17,21               | 147:18,20               |
| 170:22 174:2,5          | 99:13,24               | 186:19 219:25        | <b>thin</b> 40:5        | 223:22                  |
| 176:15 196:16           | 100:16,20,23           | 223:19 225:17        | <b>thing</b> 34:6 43:22 | <b>thousand</b> 88:11   |
| <b>terminology</b>      | 100:24 101:7,8         | 237:4                | 59:24 184:8             | 173:11                  |
| 65:11 85:4              | 101:25 102:4,6         | <b>Texas'</b> 74:17  | 197:12                  | <b>three</b> 17:24,24   |
| <b>terms</b> 25:14      | 102:19 103:3           | 77:3                 | <b>things</b> 15:18     | 28:10 40:22             |
| 56:17,23 75:21          | 103:10,23              | <b>text</b> 234:21   | 16:5 21:15              | 85:21,21                |
| 76:8 95:25              | 104:18,24,25           | <b>texting</b> 100:4 | 46:22 57:5,5            | 110:14,15,15            |
| 135:5 136:10            | 105:5,10,12,13         | 150:6                | 57:13 107:4             | 111:2,14                |
| <b>terrible</b> 56:1    | 116:9 117:4            | <b>thank</b> 7:9,15  | 127:17 177:4            | 143:19 161:1,2          |
| <b>test</b> 175:15      | 121:1,17,18            | 46:5,10 60:15        | 183:24                  | 161:16 167:6            |
| 218:3                   | 122:20,23              | 60:24 66:23          | <b>think</b> 7:1,7      | 179:7 221:23            |
| <b>tested</b> 221:21    | 123:17 126:12          | 80:3,4 83:4,8        | 17:20,24 26:21          | 234:21,23               |
| <b>testified</b> 7:17   | 127:10 128:5           | 90:18 93:5           | 31:23 32:7              | <b>three-and-a-h...</b> |
| 26:5 48:14              | 128:19 130:21          | 97:20,23 98:6        | 37:16,19 38:14          | 171:9                   |
| 61:18 63:23             | 130:24 131:20          | 99:4 100:7           | 51:11 58:16             | <b>three-week</b>       |
| 66:22,25 68:7           | 131:21 132:25          | 102:1,11 105:3       | 60:5 63:13              | 171:8                   |
| 69:21 70:16             | 133:14 136:23          | 105:15 106:10        | 64:2,7,11 66:2          | <b>threw</b> 45:11      |
| 71:22 83:22             | 138:8 140:19           | 106:22 107:21        | 66:9 67:2 69:7          | <b>thumb</b> 7:1,3      |
| 85:2 86:2               | 141:22 148:3           | 108:8 110:10         | 72:2 74:15              | <b>tie</b> 175:2,3      |
| 90:19,25 94:23          | 149:12 183:21          | 111:12 113:25        | 79:22 80:6              | <b>tied</b> 126:3       |
| 94:24 95:5              | 185:17,23              | 117:6 122:21         | 83:22 85:2              | 217:12                  |
| 105:17 126:17           | 190:8 192:18           | 123:10,25            | 89:14 90:18             | <b>Tierra</b> 110:21    |
| 128:23 133:10           | 199:8 203:13           | 129:2 131:3          | 93:4 95:24              | <b>tighter</b> 27:12    |
| 138:3 140:6,9           | 222:24 223:22          | 132:10 134:2         | 96:11,13                | <b>time</b> 8:9 13:21   |
| 143:6,21                | 224:4 226:3,15         | 138:22,24            | 104:14,25               | 18:1 21:16,16           |
| 146:10 147:3,4          | 229:10,11              | 147:14,22,25         | 105:4,11 113:2          | 23:1 29:3               |
| 151:13 199:19           | <b>Texas</b> 1:3 2:3   | 148:4,6,11           | 113:7 114:20            | 34:10 38:25             |
| 207:22 225:22           | 5:3 6:24 7:1           | 149:7 151:6,8        | 116:20 118:24           | 39:11 40:10             |
| <b>testify</b> 17:10    | 10:24 14:25            | 151:11 161:6         | 120:16 121:13           | 43:8 51:4               |
| 26:9 37:17              | 15:3,8 18:18           | 185:6 189:18         | 123:5 128:22            | 54:19 66:19             |



|  |  |   |   |   |
|--|--|---|---|---|
| 86:17 94:1,18<br>98:4,4 103:23<br>103:25 104:3<br>104:13 108:2<br>108:14,18,22<br>115:11 118:4<br>119:7 123:6<br>124:12,15<br>131:16 139:25<br>141:21 142:24<br>153:17 154:19<br>155:1 166:1,7<br>166:23,25<br>167:1,5,21<br>171:24 172:16<br>175:9,9 179:7<br>179:9 189:20<br>194:14 200:3<br>200:20 201:5,7<br>201:8 202:5<br>210:9 216:16<br>219:5 229:5<br>231:6 233:12<br>234:15 236:1<br>237:8<br><b>timelines</b> 233:9<br><b>timely</b> 34:8<br>39:24<br><b>times</b> 10:12<br>20:12 59:3<br>76:8,14,15,19<br>76:23 79:10<br>184:9 191:3,3<br>198:18 208:11<br><b>timings</b> 166:23<br>166:24<br><b>tip</b> 28:14,16<br><b>title</b> 108:11,12<br><b>titled</b> 80:15,15<br><b>today</b> 6:3 16:21<br>20:2 92:19<br>125:6 139:6<br>140:2,6,17<br>155:23 156:7<br>156:10,17<br>164:22 189:20<br>192:18 193:3 | 199:9 202:18<br>220:1 226:16<br>229:11<br><b>today's</b> 5:5<br>16:24<br><b>told</b> 57:8,9<br>115:18 124:9<br>124:15 131:2<br>131:21<br><b>tomorrow</b> 6:4<br>236:1<br><b>tons</b> 164:13<br><b>tool</b> 76:20 78:11<br>181:5<br><b>tools</b> 214:20<br><b>top</b> 19:18 23:3<br>27:3 29:11<br>31:5 32:11<br>49:21 65:18<br>196:12 230:19<br><b>topic</b> 142:4<br>229:12<br><b>topics</b> 143:6<br>183:15,17<br>229:9<br><b>total</b> 12:24<br>18:10 27:18<br>31:21 32:18,19<br>32:21 33:6,8<br>33:21,23,24<br>144:23 169:6<br>175:15,18<br>177:20 192:1<br>198:15,17<br>217:22<br><b>totals</b> 33:19<br>144:17<br><b>track</b> 15:9,21<br>22:21 23:17<br>30:1,2 35:10<br>35:24 38:1<br>132:1,5<br><b>tracked</b> 37:5<br><b>tracking</b> 29:3<br>36:18<br><b>tract</b> 143:20,25<br>159:10 166:22 | <b>tractor</b> 154:11<br>188:18<br><b>tracts</b> 143:24<br>181:17<br><b>training</b> 121:6<br>123:18<br><b>transcript</b> 1:9<br>237:7<br><b>Transcription</b><br>1:14<br><b>transfer</b> 20:10<br>27:13 62:7,9<br>62:18,24,25,25<br>86:7<br><b>transferred</b><br>16:15 20:19<br>62:12,16 63:6<br>63:8 92:23<br><b>transferring</b><br>97:2<br><b>transitional</b><br>108:4<br><b>transitioned</b><br>97:12<br><b>transportation</b><br>154:15<br><b>travel</b> 34:19<br><b>treatment</b> 228:7<br>228:8<br><b>tree</b> 9:1,3,4,8,13<br>9:18,20 10:13<br>40:11,12 41:6<br><b>trees</b> 8:18 40:4<br>40:12,21 79:17<br>128:10 159:15<br>159:22,23<br>160:9,9 204:15<br>204:16<br><b>trended</b> 39:1<br><b>trends</b> 122:15<br><b>trial</b> 7:1 48:25<br>49:5,6,10<br>70:13 101:14<br><b>trials</b> 82:23<br><b>tried</b> 178:9<br><b>trigger</b> 222:17<br><b>triple</b> 52:8 | <b>triticale</b> 143:14<br><b>trouble</b> 8:1<br>106:8 120:2<br>122:19 184:4<br>184:12<br><b>true</b> 142:5,13,19<br>220:3,6 226:10<br>237:6,7<br><b>trunk</b> 9:5 40:12<br>41:7<br><b>truth</b> 99:13,14<br>99:14 149:12<br>149:13,13<br>224:5,5,6<br><b>try</b> 21:21 30:20<br>34:8 45:8 56:4<br>87:19 105:20<br>142:1 161:10<br>161:25 163:14<br>176:19 188:12<br><b>trying</b> 9:7 15:19<br>56:7 73:6 88:7<br>89:2 93:2<br>113:15 115:11<br>117:7 184:10<br>192:16 199:20<br><b>turn</b> 8:6 11:13<br>23:2 29:9,14<br>35:5,12 39:10<br>39:22 41:19<br>48:16 49:18<br>50:4,24 51:4<br>51:17 52:14<br>56:11 89:14<br>104:24 115:16<br>184:19,23<br>185:2 207:10<br>207:15,20<br>210:2<br><b>turned</b> 106:10<br>201:9<br><b>turning</b> 15:12<br>55:11 99:5<br>154:6 157:1<br>178:18<br><b>turnout</b> 166:8<br><b>twice</b> 85:19 | <b>two</b> 7:4 10:3,4,4<br>14:13 16:19<br>57:13 108:10<br>108:17,20<br>111:16 117:23<br>130:17 131:4,7<br>131:8,9,11<br>132:17 134:1<br>142:5,14<br>143:24 157:3<br>164:2 208:21<br>212:2 228:9<br>230:9 235:11<br><b>two-part</b> 133:2<br><b>TX</b> 237:24<br><b>type</b> 8:14 9:3<br>20:25 24:20<br>110:22 118:2<br>150:5 168:7,7<br>206:18,21<br>228:18<br><b>types</b> 21:1,4,17<br>117:21<br><b>typical</b> 39:6<br><b>typically</b> 12:3<br>34:15 117:25<br>118:2 160:20<br>161:2<br><hr/> <b>U</b> <hr/> <b>U.S</b> 3:13 55:22<br>57:9 61:5<br>177:11<br><b>Uh-huh</b> 65:17<br>68:19 195:8<br><b>ultimately</b> 47:4<br>59:12 95:2<br>96:2 220:8<br><b>umbrella</b> 152:9<br>181:8 208:3<br><b>Un-edible</b> 41:2<br><b>un-full</b> 92:22<br><b>unable</b> 73:19<br>187:16<br><b>unbalanced</b><br>203:23<br><b>unclear</b> 210:20 |
|--|--|---|---|---|

|   |   |   |  |   |
|---|---|---|--|---|
| <b>underground</b><br>128:12  | <b>uniform</b> 195:5  | 36:5 38:15  | 203:21 204:23  | 152:2,12,20   |
| <b>underlying</b><br>196:22   | <b>unit</b> 37:22   | 39:18,21 44:10  | 204:25 209:18  | 156:5 157:24  |
| <b>understand</b><br>26:13 31:2,3<br>32:7 45:24<br>50:13,20 51:22<br>52:1 62:24<br>65:3 76:11<br>81:25 88:7<br>89:2,5 100:5<br>102:4,21,23<br>103:14 105:4,8<br>115:12 135:8<br>135:10 141:22<br>145:20 150:7<br>153:3 190:8<br>191:20 193:13<br>196:8 199:8<br>200:8 204:8,22<br>205:7,21<br>207:24,25<br>225:2 229:25 | <b>United</b> 1:1 3:11<br>5:3,19 6:24 7:6<br>18:17 25:22,23<br>94:20 98:22,25<br>102:3 104:8,11<br>110:7 144:14<br>144:15 148:21<br>190:7 223:19<br><b>University</b><br>107:10 112:18<br>226:19<br><b>unlevel</b> 58:21<br><b>unmarkable</b><br>168:17<br><b>unnecessary</b><br>74:22<br><b>unsatisfactory</b><br>46:24<br><b>unused</b> 62:12<br><b>update</b> 235:18<br><b>updating</b> 181:3<br><b>upland</b> 159:15<br><b>upper</b> 19:11<br><b>uptake</b> 175:2,3<br>177:5<br><b>urgency</b> 214:9<br><b>usage</b> 29:11 32:2<br>33:23,24 35:11<br>35:16,25 38:11<br>38:23 88:4,9<br>92:25 159:18<br><b>USDA</b> 168:19<br>177:10<br><b>use</b> 8:15,16,20<br>9:4 10:22 11:9<br>11:11,12 12:5<br>13:11 14:16<br>15:10,12,22<br>16:17 17:4<br>20:5,24 21:22<br>21:24 22:2,5,9<br>22:22 23:21<br>28:10,11,18,22<br>29:1,4 32:5<br>33:4 34:4,8,9 | 45:3,6 46:3,4,8<br>47:6,13 48:19<br>50:18,21,21<br>51:1,10,10,11<br>51:13,14 52:3<br>52:6,9,12,25<br>53:1,6,23 54:1<br>54:2,14,17,18<br>60:11 61:22<br>62:21 63:1,6,8<br>63:9,10 66:13<br>69:23 70:7<br>71:17 81:10<br>82:9,12 83:23<br>84:1,3 86:3,4<br>88:13,16,20,21<br>88:22,24 89:6<br>89:13 93:2<br>94:5,16,24<br>96:10 97:4<br>103:1,1 107:7<br>111:19 114:22<br>115:1 123:14<br>124:6,22<br>146:18 147:12<br>156:13 158:25<br>159:4,17<br>160:17,21<br>162:16,23<br>166:15,17,23<br>166:24 167:12<br>167:15,17<br>168:23 169:7<br>170:9,17<br>172:10 175:5<br>176:22 177:25<br>178:19,21<br>179:13,20,21<br>179:23 186:20<br>187:9,13,16<br>188:23,25<br>193:1,6 199:6<br>199:25 200:16<br>200:24 201:1<br>201:12 203:5 | <b>useful</b> 119:18<br><b>users</b> 18:4 56:1<br>74:25 226:4<br>231:9<br><b>uses</b> 14:20 24:21<br>26:8 38:2<br>88:18 97:16<br>100:25 159:20<br>159:21 160:19<br><b>uses/consumes</b><br>9:14<br><b>usually</b> 160:25<br>204:1 221:10<br><b>Utah</b> 226:19<br><b>utilities</b> 227:3,5<br>227:17,20<br>228:2,15,23<br>229:2 231:10<br><b>utility</b> 18:24<br>228:10,12<br>229:4 230:17<br>230:18 231:14<br><b>utilize</b> 54:9<br>166:5 181:22<br>194:14 206:3<br><b>Uvas</b> 152:12,20<br>158:4 173:11<br>190:12 | 158:2,4,6,14<br>168:25 172:14<br>172:17 173:4,7<br>173:16 183:8<br>187:20 190:9<br>190:11,12,17<br>191:9 192:19<br>193:1,2,4,5,7<br>193:11,23<br>195:2,3 201:2<br>204:6,24<br>206:19 208:25<br>209:3,10,14,17<br>209:20,21,23<br>209:24 213:9<br>213:17 215:3,8<br>215:16 216:12<br>222:5,6<br><b>valuable</b> 60:6<br><b>valuation</b><br>100:24 121:4<br><b>value</b> 101:3<br>174:21 215:22<br><b>valves</b> 166:18<br>167:5<br><b>variable</b> 18:22<br>39:13,17<br><b>variance</b> 8:13<br><b>varied</b> 155:11<br><b>varies</b> 157:16<br>159:18 161:17<br>164:19 165:9<br>168:11,25<br>169:1,8 170:13<br>175:19 177:18<br>178:4 195:3,10<br>195:12 197:16<br>220:24<br><b>various</b> 15:17<br>21:11 61:11<br><b>vary</b> 220:23<br><b>vegetables</b><br>161:12,22,23<br>162:17,25<br><b>veiled</b> 121:17 |
| <b>understanding</b><br>9:9 12:4 15:17<br>17:11 19:14<br>37:18 50:10,25<br>52:5 57:2<br>77:22 81:23<br>85:16 87:20,21<br>113:1 120:7,19<br>121:20 124:20<br>186:11,17<br>191:14 199:1<br>206:9  |   |   |  |   |
| <b>understandings</b><br>102:25 120:15  |   |   |  |   |
| <b>understands</b><br>207:24  |   |   |  |   |
| <b>understood</b><br>10:23 24:17<br>146:2,8   |   |   |  |   |
| <b>underwriting</b><br>109:20   |   |   |  |   |
| <b>unfair</b> 45:8  |   |   |  |   |
| <b>unfounded</b> 26:7   |   |   |  |   |
|   |   |   | <b>V</b>   |   |
|   |   |   | <b>v</b> 3:6 56:9 58:8   |   |
|   |   |   | <b>vacant</b> 141:4,17<br>141:20   |   |
|   |   |   | <b>Valentine</b> 48:5<br>54:24 95:3  |   |
|   |   |   | <b>valley</b> 20:23<br>21:13 41:16,18<br>44:22 45:10<br>50:23 63:18<br>89:1 96:10<br>110:18 124:24<br>138:12,17  |   |

|   |  |   |  |  |
|---|--|---|--|--|
| <b>version</b> 20:6<br>23:9 80:11   | 161:11 162:18<br>174:16 184:18   | 24:21 26:14,15<br>26:18,19 27:13  | 86:17 87:1,4<br>87:10,22 88:4  | 173:22,25<br>174:3,7,8,10  |
| <b>versus</b> 5:3 59:22<br>65:4 98:10<br>132:22 133:13<br>167:6 186:19  | 184:19,20<br>185:2 197:12<br>198:25 210:2<br>214:3 216:21  | 27:14,16 28:14<br>29:1,4,11 30:1<br>31:19,20,21,24<br>32:3,5,12,18  | 88:9,13,16,17<br>88:21 89:6,18<br>90:7,7,7,23<br>91:1,14,17,19   | 174:11,13,15<br>174:16,23<br>175:3,4,6,8,11<br>176:12,13,18  |
| <b>vertical</b> 125:21<br>127:1   | 220:3,8 235:6<br><b>wanted</b> 6:6 7:4<br>42:7 58:9 70:6   | 32:19,21,22<br>33:2,7,7 34:4,5<br>34:11,12,14,14<br>34:15,18,18   | 91:21,23 92:1<br>92:5,7,23,24<br>93:1 94:5,16<br>94:24 96:5,10   | 176:18 177:4<br>178:12,17,18<br>179:2,10,13,16<br>179:20,21,23   |
| <b>Verticillium</b><br>162:9  | 71:18 83:15<br>84:20 113:18<br>116:23 153:25   | 35:1 38:1,10<br>38:10,15,17,18<br>38:24 39:3,16<br>39:19 40:3,8   | 96:19 97:2,4<br>97:17 100:25<br>110:25 111:3<br>112:2,6,9  | 180:4 181:9,24<br>186:24 187:2<br>191:5,6,8,11<br>191:16,17,23   |
| <b>viability</b> 119:15<br><b>viable</b> 41:9   | 154:4 191:21<br>191:22<br><b>wanting</b> 71:15<br><b>wants</b> 6:12  | 40:10,14,16,20<br>40:23 41:4,5<br>41:12,17 43:7<br>43:14,16 44:8  | 115:1,14 120:9<br>123:14 124:6<br>124:21,22,25<br>125:1,3,10   | 192:2,4 194:16<br>194:19 195:7<br>196:4 197:14<br>197:16 198:13  |
| <b>video</b> 6:24<br>183:25 184:2<br>184:13,19,21<br>184:23 185:3   | 37:17 121:7<br>122:25 130:24<br><b>warning</b> 75:18<br><b>wasn't</b> 27:22  | 44:9,11 45:1<br>47:6 50:14,22<br>51:7,11,20<br>52:2,9,11,16   | 127:7,19,21<br>128:2,11,12,12<br>128:13,14,15<br>128:19 131:6,6  | 198:23 199:1<br>201:7,9,12<br>203:25 204:5<br>207:7,11,16,20   |
| <b>view</b> 234:2,3<br><b>visit</b> 132:8<br><b>Vista</b> 143:22<br><b>voice</b> 139:3<br><b>voir</b> 24:12 36:15   | 62:16 65:21<br>92:17 157:4<br><b>waste</b> 227:19<br>228:3 229:13  | 53:19,20,23<br>54:1,2,9,10,14<br>54:17,17,19<br>55:20 58:19   | 131:11,18<br>132:17 133:13<br>133:25 136:12<br>137:6 144:2,22  | 208:2,15<br>209:13,14,20<br>211:23 212:6<br>212:25 213:3,4   |
| <b>volume</b> 1:5<br>167:4 198:9<br><b>voluntary</b><br>232:11<br><b>vote</b> 56:19<br><b>VP</b> 139:20<br><b>VS</b> 1:5  | 228:14 229:14<br>234:11<br><b>watched</b> 207:19<br><b>water</b> 8:11,15,20  | 59:15,19,21<br>60:1,4,4,6,6<br>61:12,12,13,16<br>62:3,7,11,18   | 144:23,25<br>145:1,12,16,19<br>145:25 146:6<br>146:11,18,23  | 214:10,18<br>215:24 216:22<br>217:4,6,7,10<br>217:14,15  |
| <b>W</b>  | 8:22,22 9:1,2<br>9:10,17 10:9<br>10:21,21 11:4   | 62:21,21,22,23<br>62:25 63:1,5<br>63:11,11 64:13<br>65:25 66:16,17  | 147:9,12 154:5<br>155:6 159:16<br>159:18 160:16<br>162:23 163:9  | 220:4,6,9,22<br>221:1,4,5,8,25<br>222:10,11<br>226:3 227:11  |
| <b>wait</b> 104:13<br><b>waiting</b> 183:23<br><b>walk</b> 107:7<br><b>Wallace</b> 3:6 5:14<br>5:15,16 60:19<br>60:20 98:20,21  | 11:6,9,11,11<br>11:14 12:14<br>13:1,4,7,11,23<br>13:25 14:7,13   | 67:17,18,23<br>68:10,22 71:7<br>71:8,18,18<br>72:1,21 73:14   | 163:14,14,17<br>165:14,18,19<br>165:23,24<br>166:2,5,6,8,10  | 227:11,16,19<br>228:3,6,12<br>229:13,14,15<br>229:23,24  |
| <b>Walnut</b> 228:7<br><b>Wanger</b> 6:5,9,14<br><b>want</b> 11:13,20<br>13:22 21:21<br>23:2 30:24,24<br>30:25 47:24<br>50:9 51:9<br>53:10 93:13<br>104:21 114:8<br>122:11 135:7<br>136:5 139:7 | 14:23,25 15:1<br>15:2,8,9,21,22<br>17:16 18:4<br>19:2,14 20:2,5<br>20:9,11,13,14<br>20:15,17,19,20<br>20:21,22,23<br>21:22,22,24,24<br>22:1,1,5,9,13<br>22:13,15,17,24 | 73:15,22,22<br>74:3,7,25 75:4<br>75:19,23 79:5<br>79:16 80:21<br>81:19 82:1,9<br>82:16 84:23<br>85:7,8,10,12<br>85:13,14,14,20<br>85:22 86:4,14 | 166:11,20<br>167:3,4,6,8,16<br>167:23,25<br>168:7,9,10<br>169:3,6,15,23<br>170:2,7,9,12<br>170:14,16<br>171:4,13 172:1<br>172:6,6,9,23 | 230:16,17<br>231:9,13,17,19<br>231:23 232:4<br>232:10,15,19<br>232:20 233:5<br>233:11,14,22<br>234:13,14,15<br>234:17,18<br>235:14 |

|                                       |   |  |   |  |
|---------------------------------------|---|--|---|--|
| <b>water-bearing</b><br>195:9         | 177:25 178:13<br>178:13,14                  | <b>wells</b> 15:14,21<br>16:1,4,6,9,12 | <b>weren't</b> 63:8<br>95:13 137:21             | 149:10,14,17<br>149:23 150:1,8                                       |
| <b>water-holding</b><br>8:23          | 183:16,23<br>184:10 185:4                   | 16:19 18:8,10<br>18:15,18 19:13        | <b>Weslayan</b><br>237:24                       | 184:1,17<br>185:24 219:16  |
| <b>water-related</b><br>55:13         | 187:7 193:7<br>197:3,4,11                   | 19:21,22,24<br>21:15 22:9,10           | <b>west</b> 10:24 42:2<br>110:20 216:8          | 222:21,25<br>223:24 224:14   |
| <b>water-righted</b><br>169:21        | 202:1 206:3,5<br>211:4 223:12               | 22:19,25 39:18<br>39:21 44:20          | 216:13 230:23<br>234:7                          | 224:19,22,23<br>225:3,7 235:10                                       |
| <b>watermelons</b><br>160:15,20,24    | 231:25 235:1<br><b>we've</b> 55:19          | 58:18 59:10<br>62:8,11 63:20           | <b>western</b> 10:25<br>42:1                    | <b>witness'</b> 100:16<br>100:20                                     |
| <b>waters</b> 120:15<br>154:2         | 58:25 59:1<br>126:1 132:23                  | 63:23,24 64:3<br>64:4,5,21,22          | <b>wet</b> 28:2                                 | <b>witnessed</b><br>207:21   |
| <b>way</b> 11:2 27:7<br>37:5 46:6     | 142:19 154:3<br>171:22,25                   | 65:23,25 66:4<br>66:14,20 67:19        | <b>whatsoever</b><br>37:24                      | <b>witnesses</b> 69:16<br>81:12 99:18                                |
| 59:13 89:20<br>122:6 134:20           | 172:1 178:14<br>194:12,17                   | 67:22 89:25<br>111:6,12,14,20          | <b>wheat</b> 155:4<br>156:11 160:15             | 104:20 122:10<br>122:11 150:3  |
| 135:8 154:1<br>215:6 217:23           | 202:21 210:18<br>221:3 224:16               | 129:12,13<br>155:9,11,15,18            | 160:22 161:20<br>163:19,19                      | 183:18 224:17  |
| 223:4,9,23<br>230:20                  | <b>Website</b> 11:17<br>115:5 132:8         | 155:20 157:21<br>166:18,19             | <b>wheelhouse</b> 85:1<br><b>Wichita</b> 124:11 | <b>Witte</b> 114:18  |
| <b>ways</b> 122:19<br>129:23          | <b>Wechsler</b> 2:14<br>4:4,5 5:11,12       | 167:4,7 171:22<br>171:23,25            | <b>wife</b> 110:17<br>139:12 156:19             | <b>word</b> 66:9<br>104:16 121:13                                    |
| <b>we'll</b> 6:13 7:10<br>65:19 69:15 | 5:13 7:14,15<br>7:20,23 8:3                 | 172:2,13 173:9<br>174:18 179:17        | 156:21<br><b>willing</b> 104:13                 | <b>words</b> 69:7,8,14<br><b>work</b> 44:24 51:8                     |
| 71:1 72:8 80:6<br>81:11 82:5          | 24:9 25:16,21<br>26:1,4 27:1                | 180:1 181:22<br>182:2 183:4,8          | <b>winter</b> 28:2,2<br><b>wintertime</b> 28:3  | 55:19 84:15<br>101:24 108:9  |
| 95:23 98:4,5<br>106:12 123:5          | 28:24 30:13,18<br>36:11 37:21               | 183:11 192:24<br>193:9,22 194:3        | 163:20<br><b>wish</b> 58:12                     | 108:21 115:16<br>127:25 132:11                                       |
| 123:22 133:4<br>160:25 161:1          | 38:6 42:24<br>43:1 45:21                    | 194:4,6,8,11<br>194:14,17,18           | <b>withdrawn</b><br>198:10                      | 139:14 156:16<br>227:2 232:6   |
| 161:16 183:20<br>223:3 235:9,24       | 46:11 60:15<br>61:8 70:10                   | 194:22 195:17<br>195:19 196:4          | <b>witness</b> 5:21<br>6:17 24:13,23            | <b>worked</b> 25:6<br>55:21 73:21                                    |
| 236:5<br><b>we're</b> 7:3 8:10        | 77:15 79:22<br>83:16 93:6,8                 | 196:22 197:15<br>197:19,23,25          | 25:3,6 26:9,11<br>26:14,17,20,22                | 97:2 110:1<br>124:14   |
| 9:7 20:25<br>26:11 30:19              | 93:12 94:6<br>97:19                         | 198:1,3,13<br>201:1,10,13              | 36:20,24 37:2<br>37:6,10 49:2                   | <b>worker</b> 206:4<br><b>workers</b> 188:13                         |
| 31:4 33:5 38:7<br>38:24 39:15         | <b>weeds</b> 154:10<br>162:14,19            | 207:10,15,21<br>209:11 213:10          | 65:3,6,8 77:20<br>93:5 98:3,5                   | 188:16 206:5,8<br><b>working</b> 55:25                               |
| 45:9 46:8 51:4<br>56:5,6,9 58:16      | 188:21<br><b>week</b> 14:13 49:7            | 217:25 218:2<br>227:11 231:4           | 99:2,5,8,11,15<br>99:20,25 100:6                | 108:6 154:9<br>155:21 194:18   |
| 59:12,25 60:8<br>65:2 90:6 91:4       | 49:8,10,13,14<br>160:7 170:15               | 233:11 234:10<br><b>went</b> 5:6 10:2  | 100:10,22<br>101:4,16,16,18                     | 206:13 215:11<br>226:24  |
| 98:8 99:5,17<br>117:4 121:19          | 170:18 171:9<br>174:8                       | 24:19 38:22<br>40:23 43:11             | 101:25 103:9<br>104:22 121:3                    | 226:24<br><b>works</b> 31:2,3  |
| 121:20 122:9<br>163:4 166:2,5         | <b>weekends</b> 17:24<br><b>weeks</b> 17:25 | 64:1 71:16,20<br>108:8,21 157:3        | 123:3 139:18<br>139:23,24                       | 157:14 169:19<br>179:1   |
| 176:4,14                              | 40:23 179:8                                 | 186:3                                  | 144:7 148:3,6<br>148:8,15 149:6                 | <b>world</b> 57:7<br><b>Worldwide</b><br>237:23<br><b>worse</b> 76:5 |

|  |  |  |   |  |
|--|--|--|---|--|
| <b>worth</b> 58:17<br>85:22<br><b>wouldn't</b> 16:10<br>45:1 73:21<br>187:19 204:12<br><b>writing</b> 87:17<br><b>written</b> 58:3<br>76:16 90:16<br><b>wrong</b> 90:16  | 161:15,17,17<br>161:18 162:6,6<br>163:24 164:1,2<br>164:3,5,11<br>165:3,5,6,9,9<br>167:15,21<br>169:7,7,7,10<br>169:11,11,22<br>170:4,9,13,13<br>170:14 171:5<br>174:7 177:17<br>177:24 178:1<br>179:13,22<br>187:18,19<br>191:3 198:10<br>200:15,23<br>202:3 204:1,21<br>209:16 211:24<br>211:25 212:1<br>213:18,21<br>214:1 220:20<br>220:23,25,25<br>221:22,23<br>232:9<br><b>year's</b> 31:23<br><b>year-long</b> 41:4<br><b>years</b> 8:19 10:19<br>16:14 19:1,1<br>24:21 25:7<br>27:12 28:20<br>42:14 44:10<br>50:23 52:11<br>57:21,22,22,22<br>59:2 76:9 77:5<br>92:4 94:12,14<br>94:15 95:17,22<br>97:8,11 103:11<br>105:7 108:4<br>109:2 113:24<br>115:19 120:10<br>123:12,19<br>124:5 126:16<br>127:25 132:14<br>142:5,14<br>154:22,23,24<br>157:4 159:7<br>161:1,3,16 | 165:2,8 171:17<br>201:2 202:19<br>202:23 203:11<br>203:23 205:23<br>214:15 215:4,9<br>215:12,16<br>219:10 221:23<br>227:2,4 229:13<br>230:2 231:14<br>233:15 235:20<br>235:21<br><b>years'</b> 58:17<br><b>Yesterday</b> 8:5<br><b>yield</b> 177:1<br><b>yields</b> 171:14<br>176:5,6<br><b>young</b> 154:10<br>204:15   | 150:14 158:7<br>177:11 186:14<br>228:25 230:16<br><b>1,200</b> 157:12<br>190:11<br><b>1,500</b> 173:6<br><b>1,700</b> 175:22<br>197:17,20<br><b>1.167</b> 31:25 32:4<br>32:12<br><b>1:25</b> 98:4<br><b>10</b> 232:23<br><b>100</b> 191:19<br><b>1000</b> 2:10<br><b>101</b> 48:9 54:23<br>55:11,18 61:23<br>81:12 94:2,11<br>94:21 181:6<br><b>105</b> 4:7<br><b>11</b> 27:12 49:18<br>232:23<br><b>11:00</b> 1:12 236:1<br><b>111,385</b> 231:7<br><b>113</b> 2:5<br><b>12</b> 27:5,20 49:20<br>50:12 172:15<br>173:5 193:12<br>222:2<br><b>12.50</b> 59:22<br><b>120</b> 64:6 65:9<br><b>1200</b> 7:2<br><b>13</b> 27:6 52:14<br>53:9 77:5<br><b>1300</b> 3:7<br><b>139</b> 4:7<br><b>13th</b> 72:15<br><b>14</b> 210:12<br>211:18 233:25<br><b>14-acre</b> 180:17<br>210:5<br><b>141</b> 1:1 5:2 98:9<br><b>144</b> 4:8<br><b>14th</b> 27:7<br><b>15</b> 28:13 51:17<br>51:25<br><b>150</b> 39:9 187:24<br><b>1508</b> 2:21 | <b>151</b> 4:9<br><b>155</b> 150:16,22<br>150:23<br><b>156,000</b> 12:25<br><b>157</b> 145:3<br><b>16</b> 27:20 28:13<br>51:4,17<br><b>16th</b> 218:7<br><b>17</b> 214:15<br><b>18</b> 28:13<br><b>187</b> 216:2,13,16<br><b>1872</b> 19:19<br><b>18th</b> 3:13 182:9<br><b>19</b> 66:19 108:4<br>203:11 215:3,9<br><b>190</b> 4:10<br><b>1903</b> 55:20,22<br>60:6<br><b>1938</b> 58:10,14<br>58:16<br><b>1948</b> 15:24<br><b>1949</b> 64:2<br><b>1950s</b> 81:23<br><b>1955</b> 97:12<br><b>1966</b> 42:3<br><b>1967</b> 42:4<br><b>1980</b> 107:11<br>200:13,19<br><b>1982</b> 122:12<br><b>1984</b> 109:2<br><b>1985</b> 107:17<br><b>1986</b> 227:17<br><b>1989</b> 227:1,9<br>230:2<br><b>1990</b> 200:7<br><b>1990s</b> 91:19<br>201:18<br><b>1991</b> 107:20<br><b>1992</b> 64:12,13<br>65:19<br><b>1993</b> 36:18<br>108:10<br><b>1995</b> 157:5<br><b>1996</b> 152:7<br><b>1999</b> 108:1,9 |
| <hr/> <b>X</b> <hr/> <b>X</b> 44:21<br><b>XIII</b> 1:5 <hr/> <b>Y</b> <hr/> <b>yeah</b> 9:11,19<br>15:3 16:22<br>23:1 44:16<br>63:19 94:8<br>122:13 138:24<br>170:1 173:10<br>180:13 183:10<br>190:25 195:10<br>198:24 207:14<br>212:17 216:13<br>221:12 230:11<br>233:2<br><b>year</b> 8:17 11:4<br>11:24 12:24<br>13:12,19 14:20<br>17:1 23:20<br>31:22 33:25<br>34:9 35:10,25<br>36:4 38:15,16<br>39:3,6,15<br>40:10 52:17<br>59:18,21 60:14<br>67:1,16 73:18<br>73:21 80:18<br>81:24 89:24<br>90:3 92:13,16<br>92:22,22 112:8<br>132:3 143:14<br>143:15,17<br>144:22 155:11<br>155:12 159:13<br>159:14,19,19 |  | <hr/> <b>Z</b> <hr/> <b>Zachary</b> 2:20<br><b>zero</b> 53:21 86:10<br>221:7<br><b>zogaz@nmag....</b><br>2:22<br><b>zone</b> 162:24<br>167:14 176:4<br>176:12,14,20<br><b>zones</b> 172:7<br>187:14<br><b>zoning</b> 114:22<br><b>Zoom</b> 1:12 <hr/> <b>0</b> <hr/> <b>008</b> 150:12<br><b>023</b> 150:12<br><b>024</b> 150:13<br><b>03</b> 91:22<br><b>04-30-22</b> 237:20<br><b>064</b> 33:2 61:21<br><b>08</b> 59:2<br><b>09</b> 27:6<br><b>0963</b> 226:7 <hr/> <b>1</b> <hr/> <b>1</b> 14:10,17 72:13<br>132:6 133:24 |   | <hr/> <b>2</b> <hr/>   |

|  |   |   |  |   |
|--|---|---|--|---|
| <b>2</b> 1:12 45:7<br>50:12 59:21<br>62:4 72:7<br>73:11 75:13<br>88:18 117:18<br>145:10 229:8<br><b>2,000</b> 157:10,11<br>157:23 165:17<br>192:20 218:1,3<br><b>2,045</b> 217:21<br><b>2,500</b> 67:20<br>178:6<br><b>2,700</b> 175:22<br>197:17<br><b>2,935</b> 32:21<br><b>2,969.34</b> 32:20<br><b>2.65</b> 164:25<br><b>20</b> 50:4 164:7,8<br>165:2,8 171:17<br>190:19 192:4<br>202:23 203:11<br>215:16<br><b>20-acre</b> 204:16<br>204:19<br><b>200</b> 191:18<br><b>2000</b> 91:24<br>200:7<br><b>2001</b> 42:10<br>227:23<br><b>2002</b> 10:2,17<br>91:20,22 92:25<br>201:22 202:9<br>202:11,15<br><b>2003</b> 38:13<br>41:14 92:11<br>202:12<br><b>2005</b> 10:18<br>214:3<br><b>2005/2006</b><br>205:12<br><b>2006</b> 68:5 72:15<br>93:23 94:1,9<br>221:20,21<br><b>2007</b> 78:19<br><b>2008</b> 14:15,19<br>56:11,15 58:24<br>76:4,9,14,22 | 77:2,7,10 78:4<br>129:5,6 134:4<br>145:11,15<br>151:20 185:10<br>185:15 186:3,9<br>194:22 201:15<br>203:14 213:24<br>218:23 219:10<br><b>2009</b> 140:21<br>153:8<br><b>2010</b> 213:22<br><b>2011</b> 24:22 27:4<br>94:14 134:4<br><b>2013</b> 180:13<br>181:11 211:17<br>212:10<br><b>2014</b> 218:7<br><b>2015</b> 172:18<br>193:24<br><b>2016</b> 216:21<br><b>2017</b> 27:15,17<br>38:20,22 39:2<br>39:4 216:21<br>229:16 231:24<br>235:14<br><b>2019</b> 27:20<br>114:5 140:21<br>140:22 182:9<br>214:7,12<br><b>2020</b> 29:11<br>31:22,23 90:2<br>228:25 231:8<br><b>2021</b> 1:12 12:22<br>13:8,18 14:5<br>14:10,20 20:17<br>108:2,4 139:16<br>145:14,16<br>237:17<br><b>2041</b> 19:20<br><b>2077</b> 23:9 24:10<br><b>2140</b> 225:12<br><b>219</b> 4:10<br><b>22-year</b> 109:11<br><b>220</b> 4:11<br><b>223</b> 237:23<br><b>225</b> 4:12<br><b>23</b> 158:16 216:4 | <b>235</b> 237:24<br><b>237</b> 4:14<br><b>239-4672</b> 2:22<br><b>23rd</b> 68:5 70:18<br>71:13<br><b>24</b> 15:4 218:4,5<br><b>2491</b> 225:13<br>235:2<br><b>2492</b> 225:13<br>231:19 232:1<br><b>2493</b> 225:13<br>235:3<br><b>25</b> 59:22 106:23<br>110:4,9 117:2<br>140:5<br><b>25,000</b> 48:1<br><b>250</b> 65:10,11<br>159:11<br><b>26</b> 115:23 117:2<br><b>270</b> 59:20,23<br><b>2701</b> 2:5<br><b>279-7868</b> 2:6<br><hr/> <b>3</b><br><hr/> <b>3</b> 8:10 11:9<br>12:21 18:21<br>38:14 45:7<br>48:16 53:9,18<br>53:19 70:20,23<br>75:14 86:5,6,7<br>86:8 88:18<br>92:25 100:23<br>101:13 159:22<br>160:22 201:3<br>230:6<br><b>3-and-a-half</b><br>160:21 221:10<br><b>3,000</b> 67:20<br>178:6<br><b>3,500</b> 231:14<br><b>3.024</b> 81:13,17<br>170:24<br><b>3.2</b> 159:22<br><b>3.4</b> 144:17<br><b>3.5</b> 72:24<br><b>3.7</b> 72:25<br><b>3/9</b> 28:4 | <b>3:45</b> 183:20<br><b>30</b> 227:4 229:13<br><b>30,000</b> 42:21<br><b>300</b> 42:19 47:24<br>158:3<br><b>3000</b> 237:24<br><b>303</b> 3:14 23:4,5<br>23:7<br><b>305,000</b> 18:23<br><b>313,295</b> 92:11<br><b>32</b> 18:12,18<br>63:23<br><b>320</b> 190:12<br><b>32411</b> 27:4<br><b>325</b> 2:16 3:2<br><b>335,000</b> 17:2<br><b>34</b> 8:9 11:9<br>12:21 18:21<br>23:3 29:10<br>35:5,14 39:11<br>39:22<br><b>340</b> 67:9<br><b>3470</b> 70:11<br><b>35</b> 103:11<br>115:19 123:12<br>123:18 124:5<br>126:16 127:25<br>132:14 187:23<br><b>35-year</b> 119:5<br><b>350</b> 64:6 67:8,13<br><b>36</b> 29:10 171:1,3<br><b>366</b> 225:18<br><b>37</b> 23:4,5,6<br><b>370</b> 3:13<br><b>370,000</b> 173:14<br><b>3C</b> 110:19<br>147:15<br><b>3rd</b> 78:19<br><hr/> <b>4</b><br><hr/> <b>4</b> 8:12,13 9:1,11<br>13:9,15,16,17<br>14:2 19:3<br>35:12 38:7,14<br>44:2,16,25<br>45:3,9 52:14<br>59:18 62:4 | 69:23,24 70:2<br>72:20 74:9<br>79:5 82:9<br>88:25 95:7,9<br>96:6 112:8<br>132:4 144:25<br>159:20,23<br>160:21 171:6,7<br>171:8 214:5<br><b>4-acre</b> 159:21<br><b>4-and-a-half</b><br>52:22,25 54:12<br>198:5 199:12<br><b>4,000</b> 198:23<br><b>4,400</b> 198:20<br>208:7<br><b>4,500</b> 208:9<br><b>4.0</b> 72:20 73:8<br>75:9,10<br><b>4.33</b> 32:10<br><b>4.333</b> 32:4<br><b>4.5</b> 22:12,13<br>52:16 63:13,16<br>89:11 111:11<br><b>4.574</b> 33:25<br><b>4.8</b> 32:24 62:4<br><b>40</b> 151:22<br>154:24 233:15<br><b>40-year</b> 229:15<br>230:15 231:17<br>231:19,25<br>232:10 233:22<br>235:19<br><b>400</b> 153:17<br>191:16,19,22<br><b>421</b> 11:14<br><b>446-7979</b> 2:11<br><b>450</b> 67:12<br><b>470</b> 42:22 67:25<br><b>474</b> 48:7 81:6<br><b>48</b> 9:16,23 10:6<br>10:10,12 13:15<br>96:22,23 168:9<br><b>48-inch</b> 96:24<br><b>49</b> 64:2<br><hr/> <b>5</b><br><hr/> |
|--|---|---|--|---|

|  |   |  |   |  |
|--|---|--|---|--|
| <b>5</b> 10:10,13 11:3<br>11:6 23:3 44:7<br>188:10<br><b>5-and-a-half</b><br>9:12 10:10,13<br>54:13 160:20<br>179:20 198:7<br>199:2,3,6,13<br>199:20,24<br>200:6,11,17,19<br>200:20,24<br>203:22 220:19<br>221:14<br><b>5,500</b> 208:9<br><b>5.2</b> 32:25 53:4<br><b>5.4</b> 33:11<br><b>5.436</b> 32:22<br><b>5.5</b> 22:11 32:1,3<br>32:4 33:2 53:1<br>53:2,3 80:20<br>80:25 82:7,12<br>88:12,16,19<br>89:8,11,12<br>97:6,9 198:1<br>198:10,18<br>208:12<br><b>5:05</b> 236:7<br><b>50</b> 16:2 57:25<br>64:2,2 88:14<br>88:15 157:7<br><b>50-pound</b><br>164:14<br><b>500</b> 2:10 158:3<br><b>505</b> 2:17,22 3:3<br><b>508-6281</b> 3:8<br><b>50s</b> 155:19<br><b>51</b> 16:2<br><b>539</b> 31:15<br><b>550</b> 88:13,17<br><b>555</b> 31:15<br><b>57</b> 58:1 195:11<br><b>570-4591</b> 3:3<br><b>599</b> 100:22<br><b>599.37</b> 31:12<br><hr/> <b>6</b><br><b>6</b> 8:12,13 9:1,11 | 10:13 13:16<br>44:8 53:20<br>82:9,11 86:9<br>125:1 160:19<br><b>6,000</b> 164:13<br><b>60</b> 44:10 52:11<br>195:4 196:22<br><b>60-acre</b> 143:20<br><b>60-inch</b> 11:3<br><b>60/70</b> 97:8<br><b>600</b> 31:13 63:20<br>67:3 78:13<br>79:20 222:5<br><b>602</b> 80:6<br><b>60s</b> 155:19<br><b>61</b> 4:4<br><b>65</b> 173:1,5<br>187:25 188:10<br><b>65,000</b> 173:17<br><b>673</b> 150:10<br>182:4 213:12<br>213:13<br><b>689</b> 45:13 70:9<br>70:14<br><b>6A</b> 51:25<br><b>6H</b> 51:18<br><b>6I</b> 51:5<br><hr/> <b>7</b><br><b>7</b> 4:4 19:12 35:5<br>35:14<br><b>7-and-a-half</b><br>221:3<br><b>7,000</b> 164:13<br><b>70</b> 14:14 44:10<br>50:23 52:11<br>195:4,11<br>196:22<br><b>700,000</b> 164:14<br><b>701</b> 103:10<br><b>702</b> 121:7<br><b>70s</b> 154:20<br><b>72</b> 168:8<br><b>720</b> 2:6 3:8<br><b>75</b> 39:5<br><b>750</b> 233:23<br><b>77/78</b> 16:20 | <b>77027</b> 237:24<br><b>774</b> 34:1<br><b>780</b> 190:23<br>191:3<br><b>790</b> 67:4,12<br><b>791</b> 150:11<br>151:2,7 180:8<br>180:9 210:3<br>212:5<br><b>7th</b> 3:7<br><hr/> <b>8</b><br><b>8</b> 39:11 48:16,17<br>180:13 215:20<br>215:21<br><b>80</b> 58:16<br><b>800</b> 67:16<br>157:13 158:2<br>190:8,16<br>198:14,17<br>208:7<br><b>800-745-1101</b><br>237:25<br><b>80202</b> 3:14<br><b>80203</b> 3:8<br><b>80205</b> 2:5<br><b>80s</b> 154:20<br><b>8262</b> 237:20<br><b>83</b> 4:5<br><b>844-1375</b> 3:14<br><b>86</b> 110:18<br>143:11 144:3<br><b>87</b> 64:8<br><b>87501</b> 2:16,21<br>3:2<br><b>881</b> 225:11<br><b>8th</b> 237:17<br><hr/> <b>9</b><br><b>9</b> 39:23<br><b>90</b> 12:23 57:20<br>59:18 108:25<br>170:5<br><b>900</b> 190:13<br><b>90s</b> 113:13 201:7<br><b>916</b> 2:11<br><b>92</b> 19:11 | <b>93</b> 4:5 19:11<br>38:10<br><b>943</b> 225:11<br><b>944</b> 225:11<br><b>946</b> 225:11<br><b>947</b> 225:11<br><b>949</b> 225:11<br><b>952</b> 225:17<br><b>955</b> 225:12<br><b>956</b> 225:12,17<br>235:4<br><b>957</b> 225:12<br><b>95814</b> 2:10<br><b>963</b> 225:12<br><b>984</b> 35:6 36:12<br>38:5,8 90:17<br><b>986-2637</b> 2:17<br><b>989</b> 90:15<br><b>99</b> 38:12 91:24<br><b>990</b> 29:16 30:14<br>30:17 61:7<br>89:14<br><b>999</b> 3:13 |  |
|--|---|--|---|--|